

**R. v. Secretary of State for the Home Department, ex
parte. Manjit
Kaur, (Justice, intervening)
(Case C-192/99)**

**Before the Court of Justice of the European
Communities**

ECJ

**(Presiding, Rodríguez Iglesias P.; Gulmann, La Pergola,
Wathelet and Skouris
PP.C.; Edward, Puissechet, Jann, Sevón (Rapporteur),
Schintgen and Macken
JJ.) Philippe Léger, Advocate General.**

20 February 2001

H1 Reference from the United Kingdom by the English High Court, Queen's
Bench
Division (Crown Office) under Article 234 E.C.

H2 Citizenship--nationality--United Kingdom--two declarations defining term
"national" adopted in 1972 and 1982--restricted to certain categories of citizen--
right of residence denied to category of "British Overseas Citizen"-- alleged
breach of fundamental rights under Community law--nationality a matter for
Member States--with due regard to Community law--U.K. restrictive declarations
accepted by other Member States-- British nationality to be determined under
Community law in the light of the 1982 declaration.

H3 On accession to the Community, the U.K. Government annexed to the Treaty
a declaration on the definition of British nationality ("the 1972 Declaration"). This
was superseded by a 1982 Declaration, following the entry into force of the
British Nationality Act 1981, and it stated that the term "national" for the purposes
of Community law was restricted to certain categories of British citizens. Kenyan
born of Asian origin, Ms K was in the category of "British Overseas Citizen" under
the 1981 Act and, therefore, did not have the right to enter or remain in the U.K.
without special authorisation. Following several periods of temporary residence,
Ms K reapplied for leave to remain in the U.K. stating that she wished to obtain
gainful employment there and periodically travel to other Member States. Having
had the request refused, Ms K sought judicial review of the decision and the

national court made a reference to the Court with a view to ascertaining the relevant criteria for determining whether a person has *506 the nationality of a Member State for the purposes of Article 8 E.C. and the effect in Community law, if any, of the 1972 and 1982 Declarations.

Held:

Article 8 of the E.C. Treaty; United Kingdom nationality

H4 (a) Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. [19]

[Micheletti and Others v. Delegacion del Gobierno en Cantabria \(C-369/90\): \[1992\] E.C.R. I-4239, followed.](#)

H5 (b) The United Kingdom's 1972 Declaration on the definition of the term "nationality" must be taken into consideration as an instrument relating to the E.C. Treaty for the purpose of its interpretation and, more particularly, for determining the scope of the Treaty *rationae personae*, given that although a unilateral act it was annexed to the Treaty of Accession in order to clarify that issue, in particular with respect to those United Kingdom nationals who would benefit from the provisions relating to the free movement of persons, and the other Contracting Parties were fully aware of its content, the conditions of accession being determined on that basis. Furthermore, adoption of that declaration did not have the effect of depriving any person who did not satisfy the definition of a national of the United Kingdom of rights to which that person might be entitled under Community law but, rather, had the consequence that such rights never arose in the first place for such a person. [23]-[25]

H6 (c) The United Kingdom 1982 Declaration on the term "nationality", which was not challenged by the other Member States, was an adaptation of the 1972 Declaration, necessitated by the adoption of new nationality legislation, and substantially designated the same categories of persons as the 1972 Declaration. Accordingly, in order to determine whether a person is a national of the United Kingdom for the purposes of Community law it is necessary to refer to the 1982 Declaration which replaced the 1972 Declaration. [26]-[27]

H7 Representation

R. Drabble Q.C., M. Singh Gill, R. de Mello, M. Singh Panesar and S. Taghavi, Barristers, for Ms Kaur.

N. Blake Q.C. and R. Husain, Barrister, assisted by A. Owers, Director, J. Cooper, Human Rights Project Director, and C. Kilroy, Human Rights Legal Researcher, for Justice.

J. E. Collins, acting as Agent, assisted by D. Pannick Q.C., E. Sharpston Q.C. and R. Tam, Barrister, for the United Kingdom Government.

J. Molde, acting as Agent, for the Danish Government.

W.-D. Plessing and C.-D. Quassowski, acting as Agents; for the German Government.

J.-F. Dobelle, K. Rispal-Bellanger and A. Lercher, acting as Agents, for the French Government. *507

U. Leanza, acting as Agent, assisted by F. Quadri, avvocato dello Stato and G. Aiello, avvocato dello Stato, in oral argument, for the Italian Government.
P. J. Kuijper and N. Yerrell and C. Bury, in oral argument, acting as Agents, for the Commission of the European Communities.

H8 Case referred to in the judgment:

1. [Micheletti and Others v. Delegacion del Gobierno en Cantabria \(C-369/90\)](#), 7 July 1992: [1992] E.C.R. I-4239.

Further cases referred to by the Advocate General:

2. [Land Nordrhein-Westfalen v. Uecker; Jacquet v. Land Nordrhein-Westfalen \(C 64 & 65/96\)](#), 5 June 1997: [1997] I-3171; [1997] 3 C.M.L.R. 963.

3. [R. v. Saunders \(175/78\)](#), 28 March 1979: [1979] E.C.R. 1129; [1979] 2 C.M.L.R. 216.

4. [Morson and Jhanjan v. Netherlands \(35 & 36/82\)](#), 27 October 1982 [1982] E.C.R. 3723; [1983] 2 C.M.L.R. 221.

5. [Hurd v. Jones \(Her Majesty's Inspector of Taxes\) \(44/84\)](#), 15 January 1986: [1986] E.C.R. 29; [1986] 2 C.M.L.R. 1.

6. [Moser v. Land Baden-Württemberg \(180/83\)](#), 28 June 1984: [1984] E.C.R. 2539; [1984] 3 C.M.L.R. 720.

7. [Zaoui v. Caisse Regionale d'Assurance Maladie de l'Ile-de-France \(Cramif\) \(147/87\)](#), 17 December 1987: [1987] E.C.R. 5511; [1989] 2 C.M.L.R. 646.

8. [Höfner and Elser v. Macrotron GmbH \(C-41/90\)](#), 23 April 1991: [1991] E.C.R. I-1979; [1993] 4 C.M.L.R. 306.

9. [Criminal Proceedings against López Brea and Hidalgo Palacios \(C 330 & 331/90\)](#), 28 January 1992: [1992] E.C.R. I-323; [1992] 2 C.M.L.R. 397.

10. [Steen v. Deutsche Bundespost \(C-332/90\)](#), 28 January 1992: [1992] E.C.R. I-341; [1992] 2 C.M.L.R. 406.

11. [Criminal Proceedings against Batista Morais \(C-60/91\)](#), 19 March 1992: [1992] E.C.R. I-2085; [1992] 2 C.M.L.R. 533.

12. [Petit v. Office National des Pensions \(C-153/91\)](#), 22 September 1992: [1992] E.C.R. I-4973; [1993] 1 C.M.L.R. 476.

13. [Koua Poirrez v. Caisse d'Allocations Familiales de la Region Parisienne \(C-206/91\)](#), 16 December 1992: [1992] E.C.R. I-6685.

14. [Criminal Proceedings against Aubertin and Others \(C 29, 30, 31, 32, 33, 34 & 35/94\)](#), 16 February 1995: [1995] E.C.R. I-301; [1996] 2 C.M.L.R. 1.

15. [Unità Socio-Sanitaria Locale No. 47 di Biella \(Ussl\) v. Istituto Nazionale per l'Assicurazione Contro Gli Infortuni Sul Lavoro \(Inail\) \(C-134/95\)](#), 16 January 1997: [1997] E.C.R. I-195.

16. [Rlsan. Srl v. Comune di Ischia and Others \(C-108/98\)](#), 9 September 1999: [1999] E.C.R. I-5219; [2000] 4 C.M.L.R. 657. *508

17. [Jägerskiöld v. Gustafsson \(C-97/98\)](#), 21 October 1999: [1999] E.C.R. I-7319; [2000] 1 C.M.L.R. 235.

18. [Martínez Sala v. Freistaat Bayern \(C-85/96\)](#), 12 May 1998: [1998] E.C.R. I-2691.

19. [Criminal Proceedings against Wijsenbeek \(C-378/97\)](#), 21 September 1999: [1999] E.C.R. I-6207.
20. [Criminal Proceedings against Skanavi and Chryssanthakopoulos \(C-193/94\)](#), 29 February 1996: [1996] E.C.R. I-929; [1996] 2 C.M.L.R. 372.
21. [R. v. Immigration Appeal Tribunal and Singh, Ex parte Secretary of State for the Home Department \(C-370/90\)](#), 7 July 1992: [1992] E.C.R. I-4265; [1992] 3 C.M.L.R. 358.
22. [Elliniki Radiophonia Tiléorassi AE \(Ert\) and Another v. Dimotiki Etairia Pliroforissis and Others \(C-260/89\)](#), 18 June 1991: [1991] E.C.R. I-2925; [1994] 4 C.M.L.R. 540.
23. Criminal Proceedings against Awoyemi (C-230/97), 29 October 1998: [1998] E.C.R. I-6781.

Opinion of Mr Advocate General Léger

A1 The nature of the ties connecting a person to a Member State determines in large measure the rights which that person may enjoy under Community law. This reality is expressed through the term "national of a Member State", which is a concept central to the Community legal order, since possession of that status determines many of those rights as derived from the general principles of Community law.

A2 The Treaty on European Union amended the wording of Article 8 of the E.C. Treaty (now, following amendment, Article 17 E.C.), [FN1] establishing a citizenship of the Union and making such citizenship subject to possession of the "nationality of a Member State". The Community legislature thereby expressed once again the importance which it attaches to a prior national connection on the part of those seeking to invoke the benefit of Community law.

FN1 The change in numbering of **Article 8** and the new amendment to its content (an additional sentence has been inserted in para. (1)) (see para. [27] of the present Opinion) follow from the Treaty of Amsterdam.

A3 Faced with the particular situation of British nationality law, which contains different categories of nationality, one of which allows the holder to be refused any right of entry and stay in British territory, the High Court of Justice, Queen's Bench Division (Crown Office) (England and Wales), first of all requests the Court to interpret the notion of a "person holding the nationality of a Member State". The national court considers that it will then be in a position to rule on attribution of the status of "citizen of the Union" in the applicant's favour.

*509 The High Court of Justice goes on to question the Court as to the content and scope of the concept of "citizenship of the Union", as defined in Article 8a(1) of the E.C. Treaty (now, following amendment, Article 18(1) E.C.), to enable it to rule on the effects which that status may have, in regard to the right to enter and stay, for a British citizen deprived of that right under national legislation.

I --Legal framework

Community law

A4 Articles 8 and 8a(1) of the Treaty are worded as follows:

Article 8

1. Citizenship of the Union is hereby established.
Every person holding the nationality of a Member State shall be a citizen of the Union.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Article 8a

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

A5 At the time of signing the Documents concerning the Accession to the European Communities of Denmark, Ireland and the United Kingdom, the United Kingdom Government made the following declaration on the definition of the term "nationals" [FN2]:

As to the United Kingdom of Great Britain and Northern Ireland, the terms nationals, nationals of Member States or nationals of Member States and overseas countries and territories, wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:

- (a) persons who are citizens of the United Kingdom and Colonies or British subjects not possessing that citizenship or the citizenship of any other Commonwealth country or territory, who, in either case, have the right of abode in the United Kingdom, and are therefore exempt from United Kingdom immigration control;
- (b) persons who are citizens of the United Kingdom and Colonies by birth or by registration or naturalisation in Gibraltar, or whose father was so born, registered or naturalised.

FN2 [1972] O.J. L73/196.

A6 In 1982 the United Kingdom Government lodged with the Italian Government, as guardian of the Treaties, a new declaration on the definition of the term "nationals" [FN3] which was worded as follows:

In view of the entry into force of the British Nationality Act 1981, the Government of the United Kingdom of Great Britain and Northern Ireland makes the following Declaration, which will replace, as from *510 1 January 1983, that made at the time of signature of the Treaty of Accession by the United Kingdom to the

European Communities:

FN3 [1983] O.J. C23/1.

As to the United Kingdom of Great Britain and Northern Ireland, the terms "nationals", "nationals of Member States" or "nationals of Member States and overseas countries and territories", wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:

- (a) British citizens;
- (b) Persons who are British subjects by virtue of Part IV of the British Nationality Act 1981 and who have the right of abode in the United Kingdom and are therefore exempt from United Kingdom immigration control;
- (c) British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar.

...

A7 The Conference of the Representatives of the Governments of the Member States adopting the Treaty on European Union adopted and annexed to the Final Act Declaration No. 2 on nationality of a Member State, [FN4] the wording of which is as follows:

The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary.

FN4 [1992] O.J. C191/98.

National law

A8 Under the British Nationality Act 1948, [FN5] the concept of a British subject covered, in addition to citizens of the independent Commonwealth countries, "Citizens of the United Kingdom and Colonies" and "British subjects without citizenship", the latter being persons liable to become citizens of an emerging independent Commonwealth country on the coming into force of that country's citizenship law. If that did not occur, such persons would then acquire citizenship of the United Kingdom and Colonies.

FN5 Hereinafter referred to as "the 1948 Act".

A9 The Immigration Act 1971 [FN6] introduced the concept of "patriality". Only persons with patriality were exempted from immigration control when entering the United Kingdom.

FN6 Not applicable to the English text.

A10 The new British Nationality Act 1981 [FN7] abolished the status of citizenship of the United Kingdom and Colonies and divided those who held that status into three categories: *511

(a) British Citizens, including citizens of the United Kingdom and Colonies with the right of abode in the United Kingdom;

(b) "British Dependent Territories Citizens", comprising citizens of the United Kingdom and Colonies who did not have the right of abode but satisfied certain conditions concerning connection with a British Dependent Territory deemed to confer on them immigration rights to that territory;

(c) "British Overseas Citizens", comprising all citizens of the United Kingdom and Colonies who did not become British Citizens or British Dependent Territories Citizens. Lacking any connection with any British Dependent Territory, they might lack any immigration rights anywhere.

FN7 Hereinafter referred to as "the 1981 Act".

II --Facts of the main proceedings

11 Mrs Kaur [FN8] was born in Kenya in 1949, thereby becoming a Citizen of the United Kingdom and Colonies under the terms of the 1948 Act. Following the entry into force of the 1981 Act, her status became that of a British Overseas Citizen. As such, she has no right under national law to enter or remain in the United Kingdom.

FN8 Also referred to as the applicant.

12 Following several temporary periods of residence in British territory, and while once again in the United Kingdom, Mrs Kaur reapplied for leave to remain on 4 September 1996, as she had done on several occasions since 1990, the year in which she first entered the United Kingdom.

13 On 20 March 1997 Mrs Kaur applied to the High Court of Justice for judicial review of the decision of 22 January 1997 by the Secretary of State for the Home Department refusing her leave to remain in the United Kingdom.

14 On that occasion she stated that she wished to remain and obtain gainful employment in the United Kingdom and periodically to travel to other Member States in order to make purchases of goods and services and, if necessary, to work there.

15 Since it formed the view that resolution of the dispute before it depended on the interpretation of Community law, the High Court of Justice decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

1. When determining whether the Applicant, as a British Overseas Citizen not entitled (under United Kingdom law) to enter or remain in the United Kingdom, is a person holding the nationality of a Member State and therefore is a citizen of

the Union for the purpose of **Article 8** of the E.C. Treaty:

(1) What is the effect (if any) as a matter of Community law of

(a) the United Kingdom's 1972 Declaration on the definition of the term "nationals" which was made at the time of Accession to the European Communities and annexed to the Final Act of the Accession Conference, and *512

(b) the United Kingdom's 1982 Declaration on the meaning of a U.K. national, and

(c) Declaration No. 2 to the Treaty on European Union signed on 7 February 1992 that nationality is to be decided solely by reference to the national law of the Member State concerned and Member States may declare, for information, who are to be considered to be their nationals for Community purposes?

(2) If and to the extent that the United Kingdom is not entitled, as a matter of Community law, to rely on the Declarations referred to in (1) above, what are the relevant criteria for identifying whether a person has nationality of a Member State for the purposes of **Article 8** where domestic law identifies various categories of nationality only some of which confer a right to enter and remain in that Member State?

(3) In this context, what is the effect of the principle of respect for fundamental human rights under Community law claimed by the Applicant, in particular where the Applicant relies on Article 3(2) of the Fourth Protocol to the European Convention on Human Rights that no one shall be deprived of the right to enter the territory of the State of which he is a national, which has not been ratified by the United Kingdom?

2. In the circumstances of the present case, does **Article 8a(1)** of the E.C. Treaty:

(a) Confer rights on a citizen of the Union to enter and remain in the Member State of which he is a national even where those rights are otherwise denied by national law.

(b) Confer rights additional to those which existed under the E.C. Treaty prior to its amendment by the Treaty on European Union.

(c) Give rise to directly effective rights which citizens of the Union may invoke before national courts and tribunals.

(d) Apply to situations which are wholly internal to a single Member State?

III --Question 2(d) in the order for reference, concerning the applicability of Article 8a(1) of the Treaty

A16 It is appropriate first of all to address this question, since the answer which may be given to it will determine whether it is necessary to examine the other questions.

A17 The national court asks whether **Article 8a(1)** of the Treaty applies to a situation such as that in the main proceedings, in which a person who, under national law, holds the nationality of a Member State but does not have any right to enter and reside in the territory of that State invokes **Article 8a** for the purpose of securing the right to reside there.

A18 Should the answer be in the negative, the first question submitted in the

order for reference, concerning the issue of whether the applicant is or is not a "person holding the nationality of a Member State" for the purpose of **Article 8** of the Treaty, would no longer serve any purpose. If Article 8a(1) of the Treaty and the rights attached to the concept of "citizenship of the Union" featuring therein were to be held to have no bearing on a situation such as that in the main proceedings here, there would be little point in ruling on Mrs Kaur's nationality, on which precisely the status of "citizen of the Union" depends. The same reasoning applies in regard to the other questions grouped under *513 Question 2, since these will serve a purpose only if the dispute does in fact come within the scope of Community law.

A19 The Italian, Danish and United Kingdom Governments, together with the Commission, argue that the question posed falls outside the scope of Community law, and cite to this effect the case law of the Court, in particular the judgment in *Uecker and Jacquet*. [FN9]

FN9 *Joined Cases C 64 & 65/96, Land Nordrhein-Westfalen v. Uecker; [Jacquet v. Land Nordrhein-Westfalen: \[1997\] E.C.R. I-3171.](#)*

A20 Mrs Kaur, in contrast, submits that her situation is not covered by that case law and must be subject to Community law. She argues that the right to reside within the territory of the European Union, of which she has been deprived, is a right inherent to the concept of citizenship of the Union. She contends that a Member State cannot, without infringing Community law, adopt measures which have the effect of preventing one of its nationals from exercising rights conferred on that person by the Community legal order. She must be allowed to enter the territory of the Union in order there to be able to exercise all of the rights derived from her status as a citizen of the Union.

A21 The judgment in *Uecker and Jacquet* is one of the most recent judgments delivered by the Court in line with its established case law to the effect that certain provisions of Community law cannot be applied to cases which have no factor linking them with any of the situations governed by Community law and all elements of which are purely internal to a single Member State. [FN10]

FN10 *Uecker and Jacquet*, para. [16]. See also [Case 175/78, R. v. Saunders: \[1979\] E.C.R. 1129; \[1979\] 2 C.M.L.R. 216](#); [Joined Cases 35 & 36/82, Morson and Jhanjan v. Netherlands: \[1982\] E.C.R. 3723; \[1993\] 2 C.M.L.R. 221](#); [Case 44/84, Hurd v. Jones: \[1986\] E.C.R. 29; \[1986\] 2 C.M.L.R. 1](#); [Case 180/83, Moser v. Land Badenwürttemberg: \[1984\] E.C.R. 2539; \[1984\] 3 C.M.L.R. 720](#); *Case 147/87, Zaoui v. Cramif: [1987] E.C.R. 5511; [1989] 2 C.M.L.R. 646*; *Case C-41/90, Höfner and Elser v. Macrotron: [1991] E.C.R. I-1979; [1993] 4 C.M.L.R. 306*; [Case C 330 & 331/90, Criminal Proceedings against López Brea and Hidalgo Palacios: \[1992\] E.C.R. I-323](#); *Case C-332/90, Steen v. Deutsche Bundespost: [1992] E.C.R. I-341; [1992] 2 C.M.L.R. 406*; *Case C-60/91, Criminal Proceedings against Batista Morais: [1992] E.C.R. I-2085; [1992] 2 C.M.L.R. 533; *Case C-153/91, Petit v. Office National des Pensions: [1992] E.C.R. I-4973; [1993] 1 C.M.L.R. 476*; *Case C-206/91, Koua Poirrez v. Caisse d'Allocations**

Familiales: [1992] E.C.R. I-6685; Joined Cases (C 29, 30, 31, 32, 33, 34 & 35/94), Criminal Proceedings against Aubertin and Others ([C 29- 35/94](#)): [1995] [E.C.R. I-301](#); [1996] [2 C.M.L.R. 1](#); Case C-134/95, Unita Socio-Sanitaria Locale No. 47 di Biella (Ussl) v. Istituto Nazionale per l'Assicurazione Contro Gli Infortuni Sul Lavoro (Inail): [1997] E.C.R. I-195; [Case C-108/98, Rlsan. Srl v. Comune di Ischia and Others](#): [1999] [E.C.R. I-5219](#); [2000] [4 C.M.L.R. 657](#); and [Case C-97/98, Jägerskiöld v. Gustafsson](#): [1999] [E.C.R. I-7319](#); [2000] [1 C.M.L.R. 235](#).

A22 That case law developed in the course of disputes involving the principle of non-discrimination on grounds of nationality set out in the first paragraph of **Article 6** of the E.C. Treaty (now, after amendment, first paragraph of **Article 12** E.C.), together with the articles guaranteeing its application in specific areas, such as free movement of persons or services. [FN11]

FN11 See the judgments cited in fn. 9 above.

A23 The principles of Community law connected to the free movement *514 of persons and services seek to ensure that a Member State cannot use the nationality of a national of another Member State or the fact that one of its nationals has received training in another Member State as a pretext for obstructing that person's right of movement within its own territory. Citizenship of the Union, which encapsulates those principles, is designed to guarantee free movement of persons in an area without internal frontiers, as envisaged by the second paragraph of **Article 7a** of the E.C. Treaty (now, after amendment, **Article 14(2)** E.C.).

A24 The Court's position in regard to internal situations is justified by the need to confine application of the Treaty provisions or the rules of secondary law resulting therefrom to situations involving certain extraneous factors, in particular situations characterised by the existence of cross-border elements.

A25 Where such elements are not present, Community law can no longer be applicable to situations which, in that case, fall within the competence of the Member States alone. The case in the main proceedings here requires to be examined in the light of that case law.

A26 Mrs Kaur claims the status of a "person holding the nationality of a Member State" within the meaning of **Article 8** of the Treaty, and that of a "citizen of the Union" for the purposes of **Article 8a(1)** of the Treaty in support of her claim to be entitled to reside within British territory. She proposes that the concept of a "person holding the nationality of a Member State" should be construed in such a way as to limit the right of Member States to fix the criteria for attribution and the content of that nationality. [FN12]

FN12 The applicant submits that "Community law has a role in deciding who is or who is not to be regarded as a national for the purposes of the Treaty provisions". Although the matter is one where domestic law has a large role to play, Community law will prevent e.g. a Member State denationalising an individual or refusing to recognise an individual as a national where that

denationalisation or refusal to recognise would infringe basic rules of Community law (point 2.14 of her written observations).

A27 The notion of "citizenship of the Union", which is a recent concept in Community law, is far from having been fully examined by the Court and remains the subject of divergent views regarding certain of its aspects. [FN13] The fact remains that **Article 8a(1)** of the Treaty sets out unambiguously, for the purpose of the case in the main proceedings, the right of every citizen of the Union to move and reside freely within the territory of the Member States, [FN14] which expresses the idea that nationals of the Member States may move freely from one Member State to another.

FN13 See, for example, the Opinion of La Pergola A.G. in Case C-85/96, *Martínez Sala v. Freistaat Bayern*: [1998] E.C.R. I-2691 *515, and that of Cosmas A.G. in [Case C-378/97, Criminal Proceedings against Wijzenbeek](#): [1999] E.C.R. I-6207. See also A. Mattera, "La liberté de circulation et de séjour des citoyens européens et l'applicabilité directe de l'article 8A du traité CE", *Mélanges en hommage à Fernand Schockweiler* (Nomos Verlagsgesellschaft, Baden-Baden, 1999, p. 413.

FN14 [Case C-193/94, Criminal Proceedings against Skanavi and Chryssanthakopoulos](#) [1996] E.C.R. I-929; [1996] 2 C.M.L.R. 372, para. [22].

In regard to the free movement of workers and the right of establishment, the Court had already drawn a distinction between, on the one hand, the entry and residence of a national of a Member State within the territory of another Member State, which are matters coming within the scope of Community law, and, on the other, that national's entry and residence in his own territory, which are based on the rights attendant upon his nationality. [FN15] This distinction has, in my view, been maintained by the wording added to **Article 8(1)** of the Treaty by the Treaty of Amsterdam. By specifying that "citizenship of the Union" shall complement and not replace national citizenship, the Community legislature has reaffirmed the idea of an allocation of areas of competence between the Member States and the Community in matters affecting the rights and duties which an individual may acquire by reason of his or her nationality. The relationship which a national has with his or her State of origin in regard to rights of entry and residence must therefore, in principle, remain within that State's sphere of competence. It follows that "citizenship of the Union" is relevant in the present case only within the context of free movement between Member States. [FN16]

FN15 [Case C-370/90, R. v. Immigration Appeal Tribunal and Singh, Ex parte Secretary of State for the Home Department](#): [1992] E.C.R. I-4265; [1992] 3 C.M.L.R. 358, para. [22].

FN16 Admittedly, the Court ruled in [Singh](#), cited above, that, as provided by Article 3 of the Fourth Protocol to the European Convention for the Protection of

Human Rights and Fundamental Freedoms, a state may not expel one of its own nationals or deny him or her entry to its territory (para. 22). Should the Court consider that rule to be applicable, both generally and in this particular case, this would have the effect of limiting Member States' rights in the matter. It ought, however, to be borne in mind that while fundamental rights do form an integral part of the general principles of law with which the Court must ensure compliance, this is subject to the condition that the area to which the case before it relates falls within the scope of Community law (see, for example, [Case C-260/89, Elliniki Radiophonia Tileorassi AE \(Ert\) v. Dimotiki Etairia Pliroforissis and Sotirios Kouvelas](#): [1991] E.C.R. I-2925; [1994] 4 C.M.L.R. 540, paras [41] & [42]). I submit precisely that the notion of "citizenship of the Union" does not cover relations which a Member State may have with its nationals in regard to rights of entry and residence within its territory if there is no issue concerning their freedom to move from one Member State to another.

A28 The Court has consistently held that the rules governing the free movement of persons "apply only to a national of a Member State of the Community who seeks to establish himself in the territory of another Member State or to a national of the Member State in question who finds himself in a situation which is connected with any of the situations contemplated by Community law." [FN17]

FN17 Case C-230/97, Criminal Proceedings against Awoyemi: [1998] E.C.R. I-6781; [2001] 1 C.M.L.R. 15, para. [29].

A29 It should be noted that, from the strictly legal point of view, Mrs Kaur's application does not seek recognition of a right to move freely within Community territory but seeks rather to secure the right to reside within the territory of the Member State of which, according to that Member State's domestic law, she possesses a form of nationality.

A30 The applicant thus does not come within any of the hypothetical *516 categories envisaged by the Court's case law since, first, the main proceedings are not designed to secure for her benefit the right of establishment in the territory of another Member State and, secondly, she does not find herself in a situation which is connected with any of the situations contemplated by Community law.

A31 It follows from the facts established by the national court that, while not a "British citizen" under national law, Mrs Kaur does nonetheless have the status of a "British Overseas Citizen".

A32 Two possibilities can thus be envisaged.

A33 Let us first of all suppose that it is a matter for Community law to determine whether, in conferring British nationality on Mrs Kaur, the status of a "British Overseas Citizen" thereby confers on her the "nationality of a Member State" for the purposes of **Article 8** of the Treaty. An interpretation of those words leading to the finding that *Mrs Kaur does hold British nationality* would indicate that the cross-border element necessary for the application of Community law is lacking. It would then appear that the applicant is not seeking to establish herself in the

territory of another Member State and that she does not at any rate find herself in a situation which is connected with any of the situations contemplated by Community law.

A34 Mrs Kaur does invoke the free movement of persons within the Community--or, as **Article 8a(1)** of the Treaty puts it, the right to move and reside freely within the territory of the Member States--for the purpose of securing the right to reside in British territory. The applicant, who is presumed to be of British nationality, is physically present within that territory without anything to suggest that she has come from another Member State. The refusal by the British authorities to grant her leave to remain in the territory of the United Kingdom does not therefore in any way adversely affect freedom of movement within Community territory. The only cross-border element lies in the fact that Mrs Kaur comes from a non-member country, such that, with the exception of this extra-Community factor, all elements of the case in the main proceedings are internal to a single Member State.

A35 That finding cannot be invalidated by the fact that the applicant claims the right to travel to Ireland and there exercise the rights of a citizen of the Union. [FN18] The purely hypothetical prospect of a journey within the territory of the European Community does not establish a sufficient connection with Community law to justify application of **Article 8a(1)** of the Treaty. [FN19] It should be added that the subject-matter of the main proceedings is confined to the challenge brought against a decision refusing leave to remain in the United Kingdom, a fact which *517 confirms that the principal question facing the national court is, in the absence of other evidence involving the free movement of persons, confined to a purely national issue. [FN20]

FN18 Point 15 of the order for reference.

FN19 For examples of situations purely internal to a Member State in which the prospects of the situation developing externally were not considered to be sufficiently credible to warrant the Court declaring Community law to be applicable, see [Moser](#), cited above, paras [17] and [18], and *Höfner and Elser*, cited above, para. [39].

FN20 Point 3 of the order for reference.

A36 Secondly, if, as the United Kingdom Government contends, *Mrs Kaur does not hold British nationality* for the purposes of application of the Treaty, it is common ground that she also does not hold the nationality of any other Member State. That being so, she must be regarded, under Community law, as being a national of a non-member country.

A37 The principle of the free movement of persons does not apply in the situation where a person who does not hold the nationality of a Member State claims such nationality and seeks to enter or remain in the territory of one of the Member States of the Community.

A38 The Court has clearly stated in this regard that a national of a non-member

country "may not effectively rely on the rules governing the free movement of persons ..." [FN21]

FN21 Awoyemi, cited above, para. [29].

A39 Consequently, whether or not Mrs Kaur holds British nationality, Community law--and in particular the free movement of persons linked to citizenship of the Union--appears to be manifestly inapplicable to a case such as that in the main proceedings.

A40 Regard being had to that conclusion, it is, as we have seen, unnecessary to reply to the other questions.

Conclusion

A41 In light of those considerations, I propose that the Court reply as follows to the questions submitted by the High Court of Justice, Queen's Bench Division (Crown Office) (England and Wales):

Article 8a(1) of the E.C. Treaty (now, after amendment, **Article 18(1)** E.C.) is not applicable in a situation where:

--a person who holds the nationality of one Member State and who is not present in the territory of another Member State challenges the refusal by the first Member State to grant her leave to remain within its territory;

--a person who holds the nationality of a non-member country challenges the refusal by a Member State to grant her leave to remain within its territory.

JUDGMENT

1 By order of 14 April 1999, received at the Court on 25 May 1999, the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office), referred to the Court for a preliminary ruling under Article 234 E.C. a number of questions concerning the interpretation of Articles 8 and 8a of the E.C. Treaty (now, after amendment, **Articles 17** E.C. and **18** E.C.), of the Declaration by the Government of the *518 United Kingdom on the definition of the term "nationals", annexed to the Final Act of the Treaty concerning the Accession of Denmark, Ireland and the United Kingdom to the European Communities ("the 1972 Declaration"), [FN22] of the new Declaration by the Government of the United Kingdom on the definition of the term "nationals" ("the 1982 Declaration"), [FN23] and of Declaration No. 2 on nationality of a Member State, annexed to the Final Act of the Treaty on European Union ("Declaration No. 2"). [FN24]

FN22 [1972] O.J. L73/196.

FN23 [1983] O.J. C23/1.

FN24 [1992] O.J. C191/98.

2 The questions have been raised in proceedings between Ms Manjit Kaur and

the Secretary of State for the Home Department concerning Ms Kaur's application for leave to remain in the United Kingdom.

3 By order of 16 April 1999, the referring court granted leave to Justice, a non-governmental human rights organisation, to intervene in the main proceedings.

Legal framework

Community law

4 Articles 8 and 8a(1) of the Treaty are worded as follows:

Article 8

1. Citizenship of the Union is hereby established.

Every person holding the nationality of a Member State shall be a citizen of the Union.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Article 8a

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

5 The Treaty concerning the Accession of Denmark, Ireland and the United Kingdom to the European Communities ("the Treaty on the Accession of the United Kingdom") was signed on 22 January 1972 and came into force on 1 January 1973. The 1972 Declaration, which was annexed to the Final Act of that Treaty, is worded as follows:

As to the United Kingdom of Great Britain and Northern Ireland, the terms nationals, nationals of Member States or nationals of Member States and overseas countries and territories, wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:

(a) persons who are citizens of the United Kingdom and Colonies or British subjects not possessing that citizenship or the citizenship of any other Commonwealth country or territory, who, in either case, have the right of abode in the United Kingdom, and are therefore exempt *519 from United Kingdom immigration control;

(b) persons who are citizens of the United Kingdom and Colonies by birth or by registration or naturalisation in Gibraltar, or whose father was so born, registered or naturalised.

6 In 1982, in view of the entry into force of the British Nationality Act 1981, the United Kingdom Government lodged with the Italian Government, as depository

of the Treaties, the 1982 Declaration, which replaced the 1972 Declaration with effect from 1 January 1983. The 1982 Declaration provides:

As to the United Kingdom of Great Britain and Northern Ireland, the terms nationals, nationals of Member States or nationals of Member States and overseas countries and territories, wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:

- (a) British citizens;
- (b) Persons who are British subjects by virtue of Part IV of the British Nationality Act 1981 and who have the right of abode in the United Kingdom and are therefore exempt from United Kingdom immigration control;
- (c) British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar.

7 The Conference of the Representatives of the Governments of the Member States adopting the Treaty on European Union adopted Declaration No. 2, which is annexed to the Final Act of the Treaty on European Union and is worded as follows:

The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary.

National law

8 Under the British Nationality Act 1948, the concept of a British subject covered, in addition to citizens of the independent Commonwealth countries, "Citizens of the United Kingdom and Colonies" and "British subjects without citizenship", the latter being persons liable to become citizens of an emerging independent Commonwealth country on the coming into force of that country's citizenship law. If that did not occur, such persons would then acquire citizenship of the United Kingdom and Colonies.

9 The Immigration Act 1971 introduced into British law, with effect from 1 January 1973, the concepts of "patriality" and "right of abode". Only persons with patriality and a right of abode were exempted from immigration control when entering the United Kingdom.

10 *520 The British Nationality Act 1981 abolished the status of citizenship of the United Kingdom and Colonies and divided those who held that status into three categories:

- (a) British Citizens, including citizens of the United Kingdom and Colonies with the right of abode in the United Kingdom;
- (b) "British Dependent Territories Citizens", comprising citizens of the United

Kingdom and Colonies who did not have the right of abode but satisfied certain conditions concerning connection with a British Dependent Territory deemed to confer on them immigration rights to that territory;

(c) "British Overseas Citizens", comprising all citizens of the United Kingdom and Colonies who did not become British Citizens or British Dependent Territories Citizens. Having no connection with any British Dependent Territory, they may be refused any immigration rights.

Facts, main proceedings and questions submitted for preliminary ruling

11 Born in Kenya in 1949 in a family of Asian origin, Ms Kaur became a citizen of the United Kingdom and Colonies under the terms of the British Nationality Act 1948. She did not come within any of the categories of Citizens of the United Kingdom and Colonies recognised under the Immigration Act 1971 as having a right of residence in the United Kingdom. The British Nationality Act 1981 conferred on her the status of a British Overseas Citizen. As such, she has, in the absence of special authorisation, no right under national law to enter or remain in the United Kingdom.

12 Following several temporary periods of residence in British territory, and while once again in the United Kingdom, Ms Kaur, on 4 September 1996, reapplied for leave to remain as she already had done on several occasions since 1990, when she first entered the United Kingdom.

13 On 20 March 1997, Ms Kaur applied to the referring court for judicial review of the decision of 22 January 1997 by which the Secretary of State for the Home Department refused her leave to remain in the United Kingdom.

14 On that occasion Ms Kaur stated that she wished to remain and obtain gainful employment in the United Kingdom and periodically to travel to other Member States in order to make purchases of goods and services and, if necessary, to work there.

15 Having formed the view that the outcome of the proceedings before it depended on the interpretation of Community law, the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office), decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1. When determining whether the Applicant, as a British Overseas *521 Citizen not entitled (under United Kingdom law) to enter or remain in the United Kingdom, is a person holding the nationality of a Member State and therefore is a citizen of the Union for the purpose of **Article 8** of the E.C. Treaty:

(1) What is the effect (if any) as a matter of Community law of

(a) the United Kingdom's 1972 Declaration on the definition of the term

"nationals" which was made at the time of Accession to the European Communities and annexed to the Final Act of the Accession Conference, and
(b) the United Kingdom's 1982 Declaration on the meaning of a U.K. national, and

(c) Declaration No. 2 to the Treaty on European Union signed on 7 February 1992 that nationality is to be decided solely by reference to the national law of

the Member State concerned and Member States may declare, for information, who are to be considered to be their nationals for Community purposes?

(2) If and to the extent that the United Kingdom is not entitled, as a matter of Community law, to rely on the Declarations referred to in (1) above, what are the relevant criteria for identifying whether a person has nationality of a Member State for the purposes of **Article 8** where domestic law identifies various categories of nationality only some of which confer a right to enter and remain in that Member State?

(3) In this context, what is the effect of the principle of respect for fundamental human rights under Community law claimed by the Applicant, in particular where the Applicant relies on Article 3(2) of the Fourth Protocol to the European Convention on Human Rights that no one shall be deprived of the right to enter the territory of the State of which he is a national, which has not been ratified by the United Kingdom?

2. In the circumstances of the present case, does **Article 8a(1)** of the E.C. Treaty:

(a) Confer rights on a citizen of the Union to enter and remain in the Member State of which he is a national even where those rights are otherwise denied by national law.

(b) Confer rights additional to those which existed under the E.C. Treaty prior to its amendment by the Treaty on European Union.

(c) Give rise to directly effective rights which citizens of the Union may invoke before national courts and tribunals.

(d) Apply to situations which are wholly internal to a single Member State?

Questions 1(1)(a) and (b)

16 By the questions set out under 1(1)(a) and (b), which can be examined together, the referring court essentially seeks to ascertain the relevant criteria for determining whether a person has the nationality of a Member State for the purposes of **Article 8** of the Treaty and the effect in Community law, if any, of the 1972 and 1982 Declarations.

Observations of the parties

17 Ms Kaur and Justice submit that, in accordance with the principle established in [Case C-369/90, Micheletti and Others](#), [FN25] a Member *522 State can define the concept of "national" only if it has due regard to Community law and, consequently, only if it observes the fundamental rights which form an integral part of Community law. In the present case, United Kingdom legislation infringes fundamental rights inasmuch as it has the effect either of depriving Britons of Asian origin, such as Ms Kaur, of the right to enter the territory of which they are nationals, or of rendering them effectively stateless. These parties to the main proceedings also dispute the relevance of the 1972 and 1982 Declarations. These, they submit, are not part of national law, since they are not legislative measures, nor are they part of Community law, since they are not an agreement

between the States which were signatories to the Treaty on the Accession of the United Kingdom.

FN25 [\[1992\] E.C.R. I-4239](#).

18 The United Kingdom, German, French and Italian Governments, together with the Commission, take the view that, under international law, it is for each State alone to determine the categories of persons to be regarded as its citizens. This explains the unilateral nature of the 1972 and 1982 Declarations, even though the issue of the definition of the categories of British citizens entitled to move freely in the other Member States was the subject of discussion between the Contracting Parties at the time of the negotiations on the United Kingdom's accession. The United Kingdom Government explains that this was an important issue, since, in the first place, owing to its imperial and colonial history, many people had some form of link with the United Kingdom, even though they had never lived there or visited it and had no close connection with that State, and, secondly, the law on British nationality was complex and recognised various categories of "nationals" to which different rights attached.

Findings of the Court

19 As the Court held in paragraph [10] of [Micheletti and Others](#), [FN26] "[u]nder international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality".

FN26 Cited above.

20 On the basis of that principle of customary international law, the United Kingdom has, in the light of its imperial and colonial past, defined several categories of British citizens whom it has recognised as having rights which differ according to the nature of the ties connecting them to the United Kingdom.

21 The United Kingdom has defined those rights in its domestic legislation, in particular in the Immigration Act 1971, which became applicable from 1 January 1973--the same date as that on which the Treaty on the Accession of the United Kingdom entered into force. That national legislation reserved the right of abode within the territory of the United Kingdom to those citizens who had the closest connections to that State.

22 *523 When it acceded to the European Communities, the United Kingdom notified the other Contracting Parties, by means of its 1972 Declaration, of the categories of citizens to be regarded as its nationals for the purposes of Community law by designating, in substance, those entitled to the right of residence in the territory of the United Kingdom within the meaning of the Immigration Act 1971 and citizens having a specified connection with Gibraltar.

23 Although unilateral, this declaration annexed to the Final Act was intended to clarify an issue of particular importance for the other Contracting Parties, namely delimiting the scope *ratione personae* of the Community provisions which were

the subject of the Accession Treaty. It was intended to define the United Kingdom nationals who would benefit from those provisions and, in particular, from the provisions relating to the free movement of persons. The other Contracting Parties were fully aware of its content and the conditions of accession were determined on that basis.

24 It follows that the 1972 Declaration must be taken into consideration as an instrument relating to the Treaty for the purpose of its interpretation and, more particularly, for determining the scope of the Treaty *ratione personae*.

25 Furthermore, adoption of that declaration did not have the effect of depriving any person who did not satisfy the definition of a national of the United Kingdom of rights to which that person might be entitled under Community law. The consequence was rather that such rights never arose in the first place for such a person.

26 It is common ground that the 1982 Declaration was an adaptation of the 1972 Declaration necessitated by the adoption, in 1981, of a new Nationality Act, that it substantially designated the same categories of persons as the 1972 Declaration and that, as such, it did not alter Ms Kaur's situation as regards Community law. Furthermore, it has not been challenged by the other Member States.

27 The answer to be given to Questions 1(1)(a) and (b) must therefore be that, in order to determine whether a person is a national of the United Kingdom for the purposes of Community law, it is necessary to refer to the 1982 Declaration which replaced the 1972 Declaration.

The other questions

28 In view of the answer given to Questions 1(1)(a) and (b), it is unnecessary to reply to the other questions submitted by the national court.

Costs

29 The costs incurred by the United Kingdom, Danish, German, French and Italian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the *524 action pending before the national court, the decision on costs is a matter for that court.

Order

On those grounds, THE COURT, in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office), by order of 14 April 1999,
HEREBY RULES:

In order to determine whether a person is a national of the United Kingdom for the purposes of Community law, it is necessary to refer to the 1982 Declaration by the Government of the United Kingdom on the definition of the term "nationals" which replaced the 1972 Declaration by the Government of the United

Kingdom on the definition of the term "nationals", annexed to the Final Act of the Treaty concerning the Accession of Denmark, Ireland and the United Kingdom to the European Communities.

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[2001] 2 C.M.L.R. 24

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