JUDGMENT OF THE COURT

20 February 2001 *

In Case C-192/99,

REFERENCE to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office), for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Secretary of State for the Home Department,

ex parte:

Manjit Kaur,

intervener:

Justice,

on the interpretation of Articles 8 and 8a of the EC Treaty (now, after amendment, Articles 17 EC and 18 EC), of the Declaration by the Government

* Language of the case: English.

of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals', annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities (OJ 1972 L 73, p. 196), of the new Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals' (OJ 1983 C 23, p. 1), and of Declaration No 2 on nationality of a Member State, annexed to the Final Act of the Treaty on European Union (OJ 1992 C 191, p. 98),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón (Rapporteur), R. Schintgen and F. Macken, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Ms Kaur, by R. Drabble QC, M. Singh Gill, R. de Mello, M. Singh Panesar and S. Taghavi, Barristers;

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

— the United Kingdom Government, by J.E. Collins, acting as Agent, assisted by D. Pannick QC, E. Sharpston QC and R. Tam, Barrister;

— the Danish Government, by J. Molde, acting as Agent;

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

— the French Government, by J.-F. Dobelle, K. Rispal-Bellanger and A. Lercher, acting as Agents;

— the Italian Government, by U. Leanza, acting as Agent, assisted by F. Quadri, avvocato dello Stato;

— the Commission of the European Communities, by P.J. Kuijper and N. Yerrell, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Kaur, represented by R. Drabble, M. Singh Gill, R. de Mello and S. Taghavi; of Justice, represented by N. Blake; of the United Kingdom Government, represented by J.E. Collins, assisted by D. Pannick and R. Tam; of the French Government, represented by A. Lercher; of the Italian Government, represented by G. Aiello, avvocato dello Stato; and of the Commission, represented by C. Bury, acting as Agent, at the hearing on 4 July 2000,

after hearing the Opinion of the Advocate General at the sitting on 7 November 2000,

gives the following

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 EC a number of questions concerning the interpretation of Articles 8 and 8a of the EC Treaty (now, after amendment, Articles 17 EC and 18 EC), of the Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals', annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities (OJ 1972 L 73, p. 196) ('the 1972 Declaration'), of the new Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals' (OJ 1983 C 23, p. 1) ('the 1982 Declaration'), and of Declaration No 2 on nationality of a Member State, annexed to the Final Act of the Treaty on European Union (OJ 1992 C 191, p. 98) ('Declaration No 2').

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 the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland 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 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 depositary 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 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, re-applied 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 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 EC 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 UK 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 EC 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 EC 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* [1992] ECR I-4239, a Member 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.

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, second, 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*, cited above, '[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'.

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 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 of Great Britain and Northern Ireland 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 action pending before the national court, the decision on costs is a matter for that court.

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 of Great Britain and Northern Ireland for the purposes of Community law, it is necessary to refer to the 1982 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term

'nationals' which replaced the 1972 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals', annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities.

Rodríguez Iglesias Gulmann La Pergola

Wathelet Skouris

Edward Puissochet Jann Sevón

Schintgen Macken

Delivered in open court in Luxembourg on 20 February 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President