Regina v. Immigration Appeal Tribunal and Surinder Singh ex parte. Secretary of State for the Home Department
(Case C-370/90)

Before the Court of Justice of the European Communities

ECJ

(Presiding, Due C.J.; Joliet, Schockweiler, Grévisse and Kapteyn PP.C.;
Mancini, Kakouris, Moitinho de Almeida, RodrÍguez Iglesias, DÍez de Valesco,
Zuleeg, Murray and Edward JJ.) Sig. Giuseppe Tesauro, Advocate General.

7 July 1992

Reference from the United Kingdom by the Queen's Bench Division of the English
High Court under Article 177 EEC.

Provisions considered:
EEC 48, 52
Dir. 68/360
Dir. 73/148
Reg. 1612/68

Aliens. Family members. Reverse discrimination. Activation of Community rights.

Where a national of one member-State has gone to another member-State to work there as an employee pursuant to Article 48 EEC he has activated his Community status and thereafter may rely upon rights appurtenant to free movement within his own country. So when he returns to his own country he enjoys the right under Articles 48 and 52 to be accompanied by his non-EEC spouse on the same terms as any other Community migrant worker, and in

particular enjoys the rights laid down in Regulation 1612/68, Directive 68/360 and Directive 73/148. [21]

Aliens. Family members. Reverse discrimination. Activation of Community rights.

A member-State must, pursuant to Article 52 EEC *359 and Directive 73/148, grant leave to enter and reside in its territory to the spouse, of whatever nationality, of one of its nationals who has gone, with spouse, to work in another member-State under **Article 48** and then returned home to establish himself in his home State in circumstances covered by **Article 52.** The foreign spouse must enjoy at least the same rights as would be required under Community law on entering and residing in another member-State. [25]
The Court *interpreted* **Articles 48** and **52**EEC, Regulation 1612/68, Directive 68/360 and Directive 73/148 *in the context of* S, an Indian national married to a British national, who worked with his wife in Germany for two years whereupon they both returned to Britain and opened a business there, *to the effect that* Mrs. S had activated her Community status by working in Germany under **Article 48** EEC, *that* that activation continued its effects when she returned to her home country, Britain, *that* one of those effects was the right of her Indian husband to accompany her in Britain, *that* therefore while the marriage still subsisted S was entitled to reside and work in Britain so long as his wife also resided and worked there, and so *that* the United Kingdom Government was not entitled to deport him without proper reasons justified under Community law.

Representation

Stephen Richards, of the English Bar, instructed by John E. Collins, of the Treasury Solicitor's Department, and, in the written proceedings only, David Pannick, of the English Bar, instructed by Rosemary Caudwell, of the Treasury Solicitor's Department, for the United Kingdom Government.
Richard Plender Q.C., and Nicholas Blake , of the English Bar, instructed by Messrs. T. I. Clough & Co, Solicitors, for the defendant.
António Caeiro, Legal Adviser to the Commission, and Nicholas Khan, of the Commission's Legal department, for the E.C. Commission as *amicus curiae*.

The following cases were referred to in the judgment:
1. The State v. Watson and Belmann (118/75), 7 July 1976: [1976] E.C.R. 1185, [1976] 2 C.M.L.R. 552. Gaz:118/75
2. Stanton v. Institut National d'Assurances Sociales pour Travailleurs Independants (143/87), 7 July 1988: [1988] E.C.R. 3877, [1988] 3 C.M.L.R. 761. Gaz:143/87
3. The State v. Royer (48/75), 8 April 1976: [1976] E.C.R. 497, [1976] 2 C.M.L.R. 619. Gaz:48/75
4. Roux v. Belgium (C-363/89), 5 February 1991: [1991] I E.C.R. 273. Gaz:363/89

5. Knoors v. Secretary of State for Economic Affairs (115/78) , 7 February 1979: [1979] E.C.R. 399, [1979] 2 C.M.L.R. 357. Gaz:115/78 *360
6. Procureur de la Republique v. Bouchoucha (61/89), 3 October 1990: [1990] I E.C.R. 3551, [1992] 1 C.M.L.R. 1033. Gaz:61/89

The following further cases were referred to by the Advocate General:
7. Diatta v. Land Berlin (267/83), 13 February 1985: [1985] E.C.R. 567, [1986] 2 C.M.L.R. 164. Gaz:267/83
8. Regina v. Saunders (175/78), 28 March 1979: [1979] E.C.R. 1129, [1979] 2 C.M.L.R. 216. Gaz:175/78
9. Morson and Jhanjan v. Netherlands (35-36/82), 27 October 1982: [1982] E.C.R. 3723, [1983] 2 C.M.L.R. 221. Gaz:35/82
10. Moser v. Land Baden-Württemberg (180/83), 28 June 1984: [1984] E.C.R. 2539, [1984] 3 C.M.L.R. 720. Gaz:180/83
11. Iorio v. Azienda Autonoma delle Ferrovie dello Stato (298/84), 23 January 1986: [1986] E.C.R. 247, [1986] 3 C.M.L.R. 665. Gaz:298/84
12. Ministere Public v. Gauchard (20/87), 8 December 1987: [1987] E.C.R. 4879, [1989] 2 C.M.L.R. 489. Gaz:20/87
13. Zaoui v. Caisse Regionale d'Assurance Maladie d'Ile-de-France (147/87), 17 December 1987: [1987] E.C.R. 5511, [1989] 2 C.M.L.R. 646. Gaz:147/87
14. Bekaert v. Procureur de la Republique, Rennes (204/87) , 20 April 1988: [1988] E.C.R. 2029, [1988] 2 C.M.L.R. 655. Gaz:204/87
15. Nino (C-54/88, 91/88 & 14/89), 3 October 1990: [1990] I E.C.R. 3537, [1992] 1 C.M.L.R. 83. Gaz:54/88
16. Dzodzi v. Belgium (C-297/88), 18 October 1990: [1990] I E.C.R. 3763. Gaz:297/88
17. Broekmeulen v. Huisarts Registratie Commissie (246/80) , 6 October 1981: [1981] E.C.R. 2311, [1982] 1 C.M.L.R. 91. Gaz:246/80
18. Güllung v. Conseil de l'Ordre des Avocats du Barreau de Saverne (292/86), 19 January 1988: [1988] E.C.R. 111, [1988] 2 C.M.L.R. 57. Gaz:292/86
19. Regina v. H.M. Treasury Ex parte Daily Mail and General Trust Plc (81/87), 27 September 1988: [1988] E.C.R. 5483, [1988] 3 C.M.L.R. 713. Gaz:81/87
20. Levin v. Staatssecretaris Van Justitie (53/81), 23 March 1982: [1982] E.C.R. 1035, [1982] 2 C.M.L.R. 454. Gaz:53/81
21. Kempf v. Staatssecretaris Van Justitie (139/85), 3 June 1986: [1986] E.C.R. 1741, [1987] 1 C.M.L.R. 764. Gaz:139/85
22. Brown v. Secretary of State for Scotland (197/86), 21 June 1988: [1988] E.C.R. 3205, [1988] 3 C.M.L.R. 403. Gaz:197/86
23. Bettray v. Staatssecretaris Van Justitie (344/87), 31 May1989: [1989] E.C.R. 1621, [1991] 1 C.M.L.R. 459. Gaz:344/87 *361
24. Raulin v. Minister Van Onderwijs en Wetenschappen (357/89), 26 February 1992: not yet reported. Gaz:357/89

The following additional cases were referred to in argument:

25. Middleburgh v. Chief Adjudication Officer (C-15/90), 4 October 1991: [1992] 1 C.M.L.R. 353. Gaz:15/90
26. Ministere Public v. Auer (136/78), 7 February 1979: [1979] E.C.R. 437, [1979] 2 C.M.L.R. 373. Gaz:136/78
27. Auer v. Ministere Public (271/82), 22 September 1983: [1983] E.C.R. 2727, [1985] 1 C.M.L.R. 123. Gaz:271/82
28. Department of Health and Social Security v. Barr (C-355/89) , 3 July 1991: [1991] 3 C.M.L.R. 325. Gaz:355/89
29. Newton v. Chief Adjudication Officer (C-356/89), 20 June 1991: [1991] 1 C.M.L.R. 149. Gaz:356/89
30. Echternach v. Minister for Education and Science (389-390/87) , 15 March 1989: [1989] E.C.R. 723, [1990] 2 C.M.L.R. 305. Gaz:389/87
31. Re Tax Credits: E.C. Commission v. France (270/83), 28 January 1986: [1986] E.C.R. 285, [1987] 1 C.M.L.R. 401. Gaz:270/83
32. Re Biological Laboratories: E.C. Commission v. Belgium (221/85), 12 February 1987: [1987] E.C.R. 719, [1988] 1 C.M.L.R. 620. Gaz:221/85
33. Ordre des Avocats Au Barreau de Paris v. Klopp (107/83) , 12 July 1984: [1984] E.C.R. 2971, [1985] 1 C.M.L.R. 99. Gaz:107/83

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Facts

Mr. Surinder Singh, an Indian national, married a British citizen, Rashpal Purewal, in Bradford (United Kingdom) on 29 October 1982.
From February 1983 to the end of 1985 Mr. and Mrs. Singh lived in the Federal Republic of Germany, where they worked as employed persons. Mrs. Singh was employed on a part-time basis.
They returned to the United Kingdom at the end of 1985 to run a business which they purchased in February 1986.
On 21 December 1985 Mr. Singh was granted limited leave to remain for two months pursuant to the Immigration Act 1971 . On *362 17 February 1986 he applied for indefinite leave to remain; this application was renewed on 27 April 1986 following a trip to India in March of that year.
He was again granted limited leave to remain. As the spouse of a British citizen, Mr. Singh was granted a 12-month extension of this leave to remain on 25 November 1986, pursuant to Paragraph 124 of the Immigration Rules (H.C. 169, as amended by H.C. 503).
However, as a decree nisi of divorce had been made against him in July 1987, the date of expiry of his temporary leave to remain was, by decision of 7 August 1987, brought forward to 5 September 1987.
Mr. Singh appealed to an adjudicator against the decision, but he withdrew his appeal on 23 May 1988. After that date, Mr. Singh remained in the United Kingdom without authority.
On 15 December 1988 the Secretary of State for the Home Department made a

deportation order against Mr. Singh pursuant to section 3(5)(a) of the Immigration Act 1971 on the ground that Mr. Singh had remained in the United Kingdom beyond the expiry of his leave to do so.
Mr. Singh appealed to an adjudicator against that decision. His appeal was dismissed by a decision of 3 March 1989.
On 17 August 1989 the Immigration Appeal Tribunal allowed his appeal and held that
... subject to any factual issue of evasion of national laws, the appellant had a Community right as the spouse of a British citizen who herself had a Community right to set up in business in this country.
The Secretary of State for the Home Department sought judicial review by the High Court of Justice of the determination made by the Immigration Appeal Tribunal.
By order of 19 October 1990 the High Court of Justice, Queen's Bench Division, after outlining the above facts, referred the following question to the Court:
Where a married woman who is a national of a member-State has exercised Treaty rights in another member-State by working there and enters and remains in the member-State of which she is a national for the purposes of running a business with her husband, do Article 52 EEC and Council Directive 73/148 entitle her spouse (who is not a Community national) to enter and remain in that member-State with his wife?

Relevant provisions

Article 52EEC provides that:
Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a member-State in the territory of another member-State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any member-State established in the territory of any member-State.
*363 Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 58(2), under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.
Article 1 of Council Directive 73/148 on the abolition of restrictions on movement and residence within the Community for nationals of member-States with regard to establishment and the provision of services [FN1] provides that:
1. The member-State shall, acting as provided in this Directive, abolish restrictions on the movement and residence of:

FN1 [1973] O.J. L172/14.

(a) Nationals of a member-State who are established or who wish to establish

themselves in another member-State in order to pursue activities as self-employed persons, or who wish to provide services in that State.
(b) Nationals of member-States wishing to go to another member-State as recipients of services.
(c) The spouse and the children under 21 years of age of such nationals, irrespective of their nationality. (d) The relatives in the ascending and descending lines of such nationals and of the spouse of such nationals, which relatives are dependent on them, irrespective of their nationality.
Under Articles 2 and 3of that directive, member-States are required to grant the persons referred to in Article 1 the right to leave their territory or to enter it merely on production of a valid identity card or passport.
The first subparagraph of Article 4(1) of the directive provides that:
Each member-State shall grant the right of permanent residence to nationals of other member-States who establish themselves within its territory in order to pursue activities as self-employed persons, when the restrictions on these activities have been abolished pursuant to the Treaty.
The fifth subparagraph of Article 4(1) provides that:
Any national of a member-State who is not specified in the first subparagraph but who is authorised under the laws of another member-State to pursue an activity within its territory shall be granted a right of abode for a period not less than that of the authorisation granted for the pursuit of the activity in question.
'Proof' of this right shall be provided by the issue of a special residence permit.
Finally, Article 4(3) provides that:
A member of the family who is not a national of a member-State shall be issued with a residence document which shall have the same validity as that issued to the national on whom he is dependent.

*364 **Opinion of the Advocate General (Sig. Giuseppe Tesauro)**

1. The issue raised in this case is both simple in its presentation and delicate as regards its implications. The Court is called upon to determine whether Community law grants a right of residence to a national of a non-member country who is the spouse of a Community national when the latter returns to work in his or her own country after having worked in another member-State.
2. The facts of the case may be summarised as follows. In October 1982 Mr. Singh, an Indian national, married Miss Purewal, a British national, in the United Kingdom. From February 1983 until the end of 1985 the couple resided in Germany, where they were employed.
When they returned to the United Kingdom to run a business, Mr. Singh was initially granted limited leave to remain pursuant to the Immigration Act 1971, and then, in October 1986, a 12-month extension of that leave.
However, since in July 1987 a decree nisi of divorce was made against him, the date of expiry of his leave to remain was brought forward to 5 September 1987.
In December 1988 the Secretary of State for the Home Department made a deportation order against Mr. Singh pursuant to section 3 of the Immigration Act 1971, on the ground that Mr. Singh had remained in the United Kingdom after the expiry of his leave to do so.

Mr. Singh's appeal to an adjudicator against that decision was dismissed by a decision of 3 March 1989.
In August 1989 the Immigration Appeal Tribunal allowed the appeal, holding that, subject to any issue of evasion of national law, the appellant had a right under Community law to reside in the United Kingdom.
The Secretary of State for the Home Department brought proceedings for judicial review of that decision before the High Court of Justice, which in turn referred a question to the Court of Justice to determine whether, in a case where a married woman who is a national of a member-State has exercised Treaty rights in another member-State by working there and enters and remains in the member-State of which she is a national for the purposes of running a business with her husband, Article 52 EEC and Council Directive 73/148 [FN2] gives her husband, a national of a non-member country, the right to enter and reside in the member-State with his wife.

FN2 [1973] O.J. L172/14.

3. Let me state first that in my view there can be no doubt as to Mr. Singh's status as a spouse at the time of the deportation order, for the purposes of the application of the Community provisions relied upon.
As Mr. Singh has stated, without being contradicted on that point by the United Kingdom (and as the national court itself appears to accept, at least implicitly), the divorce decree granted in July 1987, because it *365 was a decree *nisi*, was not such as to affect the respondent's status as a spouse. Furthermore, the Court itself, ruling on Article 10 of Council Regulation 1612/68, which concerns the right of the spouses of employed persons to establish themselves with them, has held that the marital relationship cannot be regarded as dissolved until it has been terminated by the competent authority; it is not sufficient that the spouses simply live separately, even where they intend to divorce at a later date. [FN3]

FN3 Case 267/83, Diatta v. Land Berlin: [1985] E.C.R. 567, [1986] 2 C.M.L.R. 164, At Para. [20].

4. Before addressing the merits of the question which has been referred to the Court, I think it is necessary to determine whether the facts of this case are such as to dictate the conclusion that in the light of the Court's case law this must be regarded as a wholly internal situation in which Community law cannot be relied upon.
The Court has several times had occasion to explain the concept of a wholly internal situation and to define its scope. In Saunders, [FN4] it stated in particular that the application by an authority or court of a member-State to a worker who is a national of that same State of measures which withdraw or restrict the freedom of movement of that worker within the territory of that State as a penal measure provided for by national law by reason of acts committed within the territory of that State is a wholly domestic situation which falls outside the scope of the Treaty rules on freedom of movement for workers.

FN4 Case 175/78, Saunders [1979] E.C.R. 1129, [1979] 2 C.M.L.R. 216, At Para. [12].

Subsequently, in Morson and Jhanjan, [FN5] the Court pointed out that the Treaty provisions on freedom of movement for workers and the rules adopted to implement them cannot be applied to cases which have no factor linking them with any of the situations governed by Community law, and held that Community law does not prohibit a member-State from refusing to allow a relative, as referred to in Article 10 of Regulation 1612/68, of a worker employed within the territory of that State who has never exercised the right to freedom of movement within the Community to enter or reside within its territory if that worker has the nationality of that State and the relative the nationality of a non-member country.

FN5 Joined Cases 35 & 36/82, Morson v. Netherlands: [1982] E.C.R. 3723 , [1983] 2 C.M.L.R. 221, At Paras. [16] and [18].

Similarly, in Moser [FN6] it was stated that Article 48 EEC does not apply to situations which are wholly internal to a member-State, such as that of a national of a member-State who has never resided or worked in another member-State. That statement was subsequently confirmed in Iorio, [FN7] and, in relation to other provisions of the Treaty or of *366 secondary Community law, in Gauchard, [FN8] Zaoui, [FN9] Bekaert, [FN10] Nino, [FN11] and Dzodzi. [FN12]

FN6 Case 180/83, Land Baden-Württemberg: [1984] E.C.R. 2539, [1984] 3 C.M.L.R. 720, At Para. [20].

FN7 Case 298/84, Iorio v. Azienda Autonoma delle Ferrovie dello Stato: [1986] E.C.R. 247, [1986] 3 C.M.L.R. 665, At Para. [17].

FN8 Case 20/87, Gauchard: [1987] E.C.R. 4879, [1989] 2 C.M.L.R. 489, At Para. [13].

FN9 Case 147/87, Zaoui v. Cramif [1987] E.C.R. 5511, [1989] 2 C.M.L.R. 646, At Para. [16].

FN10 Case 204/87, Bekaert: [1988] E.C.R. 2029, [1988] 2 C.M.L.R. 655, At Para. [13].

FN11 Joined Cases C-54/88, C-91/88 &; C-14/89, Nino: [1990] I E.C.R. 3537, [1992] 1 C.M.L.R. 83, At Paras. [10] and [11].

FN12 Joined Cases C-297/88 &; C-197/89, Dzodzi v. Belgium: [1990] I E.C.R. 3763, At Paras. [23] and [24].

5. In the cases referred to, the persons who claimed rights in their own country

based on Community legislation had not in fact worked or studied in other member-States, and it was thus obvious that in the absence of any connection with Community law their situation did not fall within the scope of the Treaty.
On the other hand, it is true, as the Commission has correctly pointed out, that the simple exercise of the right of free movement within the Community is not in itself sufficient to bring a particular set of circumstances within the scope of Community law; there must be some connecting factor between the exercise of the right of free movement and the right relied on by the individual.
If, for example, Mr. and Mrs. Singh had married after their return to the United Kingdom there would clearly be no logical nexus between the exercise of the right to free movement and the right of residence on which the spouse of the Community worker seeks to rely.
Where, however, as in fact happened in this case, the right of free movement was exercised after the marriage and the persons concerned availed themselves of rights under the Community legislation on freedom of movement, it is difficult to say that the question whether a person may continue to enjoy such rights in his own country is something which lies outside the scope of Community law and constitutes a wholly internal situation. That is particularly true inasmuch as such an assertion would have the result that a Community worker's right of establishment in other member-States would be facilitated under the Community legislation but his right of re-establishment in his own country would not.
6. If, therefore, as I think, this case cannot simply be dealt with as a wholly internal situation, it is necessary to consider the provisions of Community law which may be relied upon by Mr. Singh, that is to say, having regard to the fact that his spouse moved to the United Kingdom to work as a self-employed person, Article 52 EEC and Article 1 of Directive 73/148 on the abolition of restrictions on movement and residence within the Community for nationals of member-States with regard to establishment and the provision of services.
Article 52provides, first, that within the framework of the provisions which follow it, restrictions on the freedom of movement of nationals of a member-State in the territory of another member-State were to be abolished by progressive stages in the course of the transitional period *367 and, secondly, that freedom of establishment includes the right to take up and pursue activities as self-employed persons under the conditions laid down for its own nationals by the law of the country where such establishment is effected.
The Court has held on several occasions that, at least in certain circumstances, **Article 52** may be relied upon by the nationals of a member-State in their own country of origin; the Court has held that although it is true that the provisions of the Treaty relating to establishment and the provision of services cannot be applied to situations which are purely internal to a member-State, the position nevertheless remains that the reference in **Article 52** to 'nationals of a member-State'who wish to establish themselves 'in the territory of another member-State' cannot be interpreted in such a way as to exclude from the benefit of Community law a given member-State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another member-State and have there acquired a trade qualification which is recognised by the provisions of

Community law, are, with regard to their State of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty. [FN13]

FN13 Case 115/78, Knoors v. Secretary of State for Economic Affairs: [1979] E.C.R. 399, [1979] 2 C.M.L.R. 357, At Para. [24]. See also Case 246/80, Broekmeulen v. Huisarts Registratie Commissie : [1981] E.C.R. 2311, [1982] 1 C.M.L.R. 91, At Para. [20]; Case 292/86, Gullung v. Conseils de l'Ordre des Avocats du Barreau de Colmar et de Saverne: [1988] E.C.R. 111, [1988] 2 C.M.L.R. 57, At Para. [12]; Case C-61/89, Bouchoucha: [1990] I E.C.R. 3551, [1992] 1 C.M.L.R. 1033, At Para. [13].

Furthermore, in the Stanton [FN14] and Daily Mail [FN15] cases, the Court held that **Article 52** EEC precludes legislation which has the effect of placing at a disadvantage the pursuit of occupational activities in another member-State.

FN14 Case 143/87, Stanton v. I.N.A.S.T.I. : [1988] E.C.R 3877, [1988] 3 C.M.L.R. 761, At Para. [14].

FN15 Case 81/87, Regina v. H.M. Treasury and Commissioners of Inland Revenue, Ex parte Daily Mail and General Trust Plc: [1988] E.C.R. 5483, [1988] 3 C.M.L.R. 713, At Para. [16].

7. It follows from those judgments that in the Court's view **Article 52** covers both the situation of workers from a member-State who have acquired rights recognised by Community legislation in another member-State and wish to avail themselves of those rights in their own country of origin and the situation in which national legislation in itself penalises the exercise of the right of free movement. In this case, it might be objected that Mr. Singh, on the basis of Community legislation, acquired in Germany only the right to reside in that country as the spouse of a Community worker and that the application of the British immigration legislation did not have any detrimental effect on the pursuit by Mrs. Singh of occupational activities in another member-State. In other words, Mr. and Mrs. Singh are not, by virtue of the fact that they have exercised their right *368 of free movement, in a less favourable position than a similar couple who have never worked in another member-State.
8. Even those initial objections, however, are subject to reservations, since it is in theory necessary to take into account the possibility that Mr. Singh might have obtained an unlimited right of residence or become naturalised under United Kingdom legislation if his wife had not exercised her right of free movement. That is to say, if, after examining the relevant provision of United Kingdom legislation, the national court were to hold, as the respondent in the main proceedings argued at the hearing, that the fact that he resided in Germany deprived Mrs. Singh's spouse of the possibility of obtaining, by a period of residence, a residence permit of unlimited duration in the United Kingdom, a permit which he would have obtained if the couple had remained in the United

Kingdom, it is clear that the question would arise of the compatibility with Community law of national legislation which in substance penalises the exercise of the right of free movement.

9. That is not all. Even leaving aside such a hypothesis, it seems to me that on the basis of the judgments of the Court to which I have referred it is possible to argue that the Community legislation on freedom of movement is applicable whenever a national of a member-State is in a situation in relation to his own country of origin similar to that of all other persons who avail themselves of the rights and liberties guaranteed by the Treaty and by secondary Community law. I think it is necessary, therefore, to ascertain in specific terms what rights are granted by Community legislation to nationals of member-States who seek to exercise their right of establishment and what the purpose and scope of those rights are.

10. As appears from the first recital in its preamble, Directive 73/148is intended to eliminate 'restrictions on movement and residence within the Community *for nationals of member-States wishing to establish themselves or to provide services within the territory of another member-State* ' (my emphasis).

In order to achieve that objective the directive *inter alia* requires member-State to allow Community nationals who wish to establish themselves in order to pursue activities as self-employed persons to enter their territory merely on production of a valid identity card or passport (Article 3) and to grant them a right of permanent residence (Article 4), and also requires them to allow their own nationals to leave their territory simply on production of a valid identity card or passport (Article 2). Under Article 1 the member-States must in particular, subject to the conditions laid down in the directive itself, abolish restrictions on the movement and residence of nationals of a member-State who are established or who wish to establish themselves in another member-State in order to pursue activities as self-employed persons *and the *369 spouses of such nationals, irrespective of their nationality* (my emphasis).

Such a right granted to relatives may be said to be ancillary to the right of establishment provided for in favour of the Community worker, and is clearly intended to eliminate the obstacles to freedom of movement for workers which would result from the impossibility or difficulty of moving the entire family unit.

11. It is true that the right of residence is expressed by the Community legislature as the right of nationals of one member-State to establish themselves in another member-State. However, the wording used may be explained by the fact that it is obvious that the individual member-States will not deny their own nationals the right of entry to and residence in their territory.

The literal wording of the provision thus does not justify the conclusion that members of the family of a worker established in a member-State are precluded from relying on the rights which the directive grants them when the spouse returns to his or her own country.

Such an interpretation would, moreover, be far from consistent with the requirements flowing from the freedom of movement for persons, the freedom of establishment and the freedom to provide services guaranteed in Articles 3(c), 48, 52 and 59 EEC, since the practical result would be that a Community national

who was established in another member-State would be assisted in moving for occupational purposes to any member-State other than his own.
12. It is clear, furthermore, that in practical terms this is a very marginal case, since it is undisputed that in general States do not seek to prevent family members of their own nationals from residing in their territory, unless of course there are legitimate suspicions of evasion of immigration legislation.
Nevertheless, the question of principle remains, and in my view it would be illogical to uphold an interpretation of the rule which, by denying the right of residence to members of the family of a citizen who returns to his own country after working in another member-State, would result in an unjustified obstacle to freedom of movement for workers within Community territory and a difference in the treatment of two workers in the same circumstances solely by reason of their different nationalities.
13. Before concluding I should like to reply to a number of remarks and understandable concerns raised by the United Kingdom, which intervened in these proceedings.
In the first place, the United Kingdom states that when she returned Mrs. Singh exercised her rights under the Immigration Act 1971 as a British national, and not the rights granted to her by Community legislation, as is shown by the fact that the British authorities could not have denied her the right of entry and residence even on grounds of *370 public policy, public security or public health, as is possible under the directive.
That observation, correct though it may be, does not seem to me to be decisive, since there is nothing to prevent the rights granted under national legislation to nationals of the member-State in question from being added to and extended by those granted under Community law.
It is true that as a general rule the rights of entry and residence which a State grants to its own nationals are more extensive than those granted under Community legislation, but it is nevertheless true that in certain circumstances--this case is an example--Community legislation grants persons who exercise their right of free movement and their spouses rights which are more extensive than those under national law.
14. Secondly, the United Kingdom states that every member-State has a legitimate interest in preventing its own nationals and their spouses from relying on Community law in order to evade the conditions laid down in national legislation.
Those concerns certainly reflect a real need and merit the greatest attention. The Court itself, referring in particular to legislation concerning occupational training, has acknowledged that it is not possible to disregard the legitimate interest which a member-State may have in preventing certain of its nationals, by means of facilities created under the Treaty, from attempting to evade the application of national legislation. [FN16]

FN16 Case 115/78, Knoors, Cited Above, at Para. [25].

However, I should point out again in that regard that Directive 73/148 allows

member-States, under Article 8 , to derogate from its provisions on grounds of public policy, public security or public health.
Moreover, the Court's case law to the effect that in order to be regarded as such an occupational activity must be effective and genuine, and not purely marginal and ancillary [FN17] may provide a useful point of reference for the national authorities in seeking to prevent abuses.

FN17 Case 53/81, Levin v. Staatssecretaris Van Justitie: [1982] E.C.R. 1035, [1982] 2 C.M.L.R. 454, Para. [17]; Case 139/85, Kempf v. Staatssecretaris Van Justitie: [1986] E.C.R. 1741, [1987] 1 C.M.L.R. 764, Para. [14]; Case 197/86, Brown v. Secretary of State for Scotland: [1988] E.C.R. 3205 , [1988] 3 C.M.L.R. 403, Paras. [21] and [23]; Case 334/87, Bettray v. Staatssecretaris Van Justitie : [1989] E.C.R. 1621, [1991] 1 C.M.L.R. 459, Para. [20].

Indeed, the Court has recently held that a national court may, in assessing the genuine and effective nature of an activity, take into account the irregular nature and *limited duration of work done* under a contract for occasional work (my emphasis). [FN18]

FN18 Case 357/89, Raulin v. Minister Van Onderwijs en Wetenschappen: Not Yet Reported.

Furthermore, the continued ability of the national authorities to take measures to prevent abuses is attested by the fact that even in this case the Immigration Appeal Tribunal, in upholding the appeal, *371 expressly reserved the possibility of examining any factual issue of evasion of national law.
15. Finally, the United Kingdom states that to apply Directive 73/148 in this case would have paradoxical consequences, since Mr. Singh's right to remain in the United Kingdom would depend not so much on his matrimonial relationship as on the continued exercise by his wife of an occupational activity.
Even that consideration does not seem to me to be such as to undermine the reasoning set out above. As a matter of principle the spouse of a national established in his own country will undoubtedly be able to take advantage of national legislation, which will normally, by sole virtue of the existence of a matrimonial relationship, grant him more extensive and enduring rights than those granted under Community legislation. As I have said, however, it is hard to see why, in the rare cases in which Community law gives rise to more extensive rights than those envisaged in national legislation, the spouse of a Community worker who returns to his or her own country and exercises the right of free establishment in Community territory should be deprived of such rights.
It is clear that where the preconditions for the application of the Community legislation cease to be met the person in question, if he is not entitled in any other way under national legislation to remain in the territory of that country, will be required to leave. But that is the natural consequence of the fact that in this particular hypothesis the rights relied on draw their validity solely from Community law; I therefore see nothing illogical or paradoxical in such a

situation.
16. In view of the foregoing considerations I therefore propose that the Court reply as follows to the question referred by the High Court of Justice:
Where a married woman who is a national of a member-State has exercised Treaty rights in another member-State by working there and her husband enjoyed a right of residence under Community law in that other member-State, and where she then establishes herself in order to work as a self-employed person in the member-State of which she is a national, Community law, in particular Directive 73/148, entitles her husband to enter and remain in that member-State under the conditions laid down in that directive.

JUDGMENT

[1] By order of 19 October 1990, which was received at the Court on 17 December 1990, the High Court of Justice (Queen's Bench Division) referred to the Court for a preliminary ruling under Article 177 EEC a question on the interpretation of Article 52 EEC and Council Directive 73/148 on the abolition of restrictions on movement *372 and residence within the Community for nationals of member-States with regard to establishment and the provision of services. [FN19]

FN19 [1973] O.J. L172/14.

[2] That question was raised in the course of proceedings between Surinder Singh, an Indian national, and the Secretary of State for the Home Department, who decided to deport Mr. Singh from the United Kingdom on 15 December 1988.
[3] It appears from the order of the national court that Surinder Singh married Rashpal Purewal, a British national, on 29 October 1982 in Bradford (United Kingdom). From 1983 until 1985 Mr. and Mrs. Singh were employed in the Federal Republic of Germany. At the end of 1985 they returned to the United Kingdom in order to open a business.
[4] In 1986 Mr. Singh was granted limited leave to remain in the United Kingdom as the husband of a British national. In July 1987 a decree nisi of divorce was pronounced against him in proceedings brought by his wife. Because of that decree the British authorities cut short his leave to remain and refused to grant him indefinite leave to remain as the spouse of a British citizen.
[5] Mr. Singh resided lawfully in the United Kingdom until 23 May 1988, on which date he withdrew the administrative appeal which he had lodged against the decision refusing him permanent leave to remain. After that date he remained in the United Kingdom without leave.
[6] The deportation order made on 15 December 1988 was based on section 3(5)(a) of the Immigration Act 1971 , concerning foreign nationals who remain unlawfully in the United Kingdom beyond the time limited by their leave.
[7] On 17 February 1989 the decree absolute was pronounced in Mr. and Mrs. Singh's divorce.

[8] The appeal to an Adjudicator against the decision of 15 December 1988 was dismissed on 3 March 1989. In a determination of 17 August 1989 the Immigration Appeal Tribunal allowed Mr. Singh's appeal against the decision of the Adjudicator, holding that he 'had a Community right as the spouse of a British citizen who herself had a Community right to set up in business in this country.'
[9] On application by the Secretary of State for the Home Department for judicial review of that determination, the High Court of Justice (Queen's Bench Division) referred the following question to the Court for a preliminary ruling:
Where a married woman who is a national of a member-State has exercised Treaty rights in another member-State by working there and enters and remains in the member-State of which she is a national for the purposes of running a business with her husband, do **Article 52** EEC and Council Directive 73/148 of 21 May 1973entitle her spouse (who is not a Community national) to enter and remain in that member-State with his wife?
*373 [10] Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the Community legislation in issue, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
[11] The question submitted by the national court for a preliminary ruling concerns the issue whether **Article 52** EEC and Directive 73/148, properly construed, require a member-State to grant leave to enter and reside in its territory to the spouse, of whatever nationality, of a national of that State who has gone with that spouse to another member-State in order to work there as an employed person as envisaged by Article 48 EEC and returns to establish himself or herself as envisaged by **Article 52** EEC in the territory of the State of which he or she is a national.
[12] It should also be observed that it is not alleged that Mr. and Mrs. Singh's marriage was a sham. Moreover, although the marriage was dissolved by the decree absolute of divorce delivered in 1989, that is not relevant to the question referred for a preliminary ruling, which concerns the basis of the right of residence of the person concerned during the period before the date of that decree.
[13] Mr. Singh and the Commission submit that a national of a member-State who returns to establish himself in that State after having pursued an economic activity in another member-State is in the same situation as a national of another member-State who comes to establish himself in that country. In their view he must be treated in the same manner, in accordance with the prohibition of discrimination laid down in Article 7 EEC, and he may therefore rely on **Article 52** EEC, particularly in relation to the right of residence of his spouse when the latter is not a national of a member-State.
[14] The United Kingdom, on the other hand, submits that a Community national who returns to establish himself in his country of origin is not in a situation comparable to that of nationals of other member-States, because he enters and remains in that country by virtue not of Community law but of national law. **Article 52** EEC and Directive 73/148 are not therefore applicable to him. The

United Kingdom also argues that the application of Community law to a national who returns to establish himself in his country of origin has paradoxical consequences, since Community law would *inter alia*allow him to be deported from that country, and maintains that to grant a right of residence to the spouse increases the risk of fraud associated with sham marriages.
[15] In Case 118/75, Watson and Belmann, [FN20]the Court held that Articles 48 and 52 EEC and Council Regulation 1612/68on freedom of movement for workers within the Community, Council Directive 68/360on the abolition of restrictions on movement and residence within *374 the Community for workers of member-States and their families [FN21] and Directive 73/148, cited above, implement a fundamental principle contained in Article 3(c) EEC, which states that, for the purposes set out in Article 2, the activities of the Community shall include the abolition, as between member-States, of obstacles to freedom of movement for persons.

FN20 [1976] E.C.R. 1185, [1976] 2 C.M.L.R. 552, At Para. [16].

FN21 [1968] O.J. Spec. ED. 485.

[16] The Court has also held, in Case 143/87, Stanton v. I.N.A.S.T.I. [FN22] that the provisions of the Treaty relating to the free movement of persons are intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude measures which might place Community citizens at a disadvantage when they wish to pursue an economic activity in the territory of another member-State.

FN22 [1988] E.C.R. 3877, [1988] 3 C.M.L.R. 761, At Para. [13].

[17] For that purpose, nationals of member-States have in particular the right, which they derive directly from **Articles 48** and **52** EEC to enter and reside in the territory of other member-States in order to pursue an economic activity there as envisaged by those provisions: see in particular Case 48/75, Royer and Case C-363/89, Roux v. Belgium. [FN23]

FN23 [1976] E.C.R. 497, [1976] 2 C.M.L.R. 619, At Para. [31] and [1991] I E.C.R. 273 Respectively.

[18] The provisions of the Council regulations and directives on freedom of movement within the Community for employed and self-employed persons, in particular Article 10 of Regulation 1612/68, cited above, Articles 1 and 4 of Directive 68/360 , cited above, and Articles 1(c) and 4 of Directive 73/148, cited above, provide that the member-States must grant the spouse and children of such a person rights of residence equivalent to that granted to the person himself.
[19] A national of a member-State might be deterred from leaving his country of origin in order to pursue an activity as an employed or self-employed person as

envisaged by the Treaty in the territory of another member-State if, on returning to the member-State of which he is a national in order to pursue an activity there as an employed or self-employed person, the conditions of his entry and residence were not at least equivalent to those which he would enjoy under the Treaty or secondary law in the territory of another member-State.
[20] He would in particular be deterred from so doing if his spouse and children were not also permitted to enter and reside in the territory of his member-State of origin under conditions at least equivalent to those granted them by Community law in the territory of another member-State.
[21] It follows that a national of a member-State who has gone to another member-State in order to work there as an employed person pursuant to **Article 48** EEC and returns to establish himself in order to pursue an activity as a self-employed person in the territory of the member-State of which he is a national has the right, under **Article 52** EEC, to be accompanied in the territory of the latter State by his spouse, a national of a non-member country, under the same conditions as are laid down by Regulation 1612/68, Directive 68/360 or Directive 73/148, cited above.
*375 [22] Admittedly, as the United Kingdom submits, a national of a member-State enters and resides in the territory of that State by virtue of the rights attendant upon his nationality and not by virtue of those conferred on him by Community law. In particular, as is provided, moreover, by Article 3 of the Fourth Protocol to the European Convention on Human Rights, a State may not expel one of its own nationals or deny him entry to its territory.
[23] However, this case is concerned not with a right under national law but with the rights of movement and establishment granted to a Community national by **Articles 48** and **52**EEC. These rights cannot be fully effective if such a person may be deterred from exercising them by obstacles raised in his or her country of origin to the entry and residence of his or her spouse. Accordingly, when a Community national who has availed himself or herself of those rights returns to his or her country of origin, his or her spouse must enjoy at least the same rights of entry and residence as would be granted to him or her under Community law if his or her spouse chose to enter and reside in another member-State.
Nevertheless, **Articles 48** and **52**EEC do not prevent member-States from applying to foreign spouses of their own nationals rules on entry and residence more favourable than those provided for by Community law.
[24] As regards the risk of fraud referred to by the United Kingdom, it is sufficient to note that, as the Court has consistently held: see in particular Case 115/78, Knoors v. Secretary of State for Economic Affairs [FN24] and Case C-61/89, Bouchoucha, [FN25] the facilities created by the Treaty cannot have the effect of allowing the persons who benefit from them to evade the application of national legislation and of prohibiting member-States from taking the measures necessary to prevent such abuse.

FN24 [1979] E.C.R. 399, [1979] 2 C.M.L.R. 357, At Para. [25].

FN25 [1990] I E.C.R. 3551, [1992] 1 C.M.L.R. 1033, At Para. [14].

[25] The answer to the question referred for a preliminary ruling must therefore be that **Article 52** EEC and Directive 73/148, properly construed, require a member-State to grant leave to enter and reside in its territory to the spouse, of whatever nationality, of a national of that State who has gone, with that spouse, to another member-State in order to work there as an employed person as envisaged by **Article 48**EEC and returns to establish himself or herself as envisaged by **Article 52** EEC in the territory of the State of which he or she is a national. The spouse must enjoy at least the same rights as would be granted to him or her under Community law if his or her spouse entered and resided in the territory of another member-State.

*376 *Costs*

[26] The costs incurred by the E.C. Commission, which submitted observations to the court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

Order

On those grounds, THE COURT, in reply to the question submitted to it by the High Court of Justice (Queen's Bench Division), by order of 19 October 1990, HEREBY RULES:
Article 52EEC and Council Directive 73/148 on the abolition of restrictions on movement and residence within the Community for nationals of member-States with regard to establishment and the provision of services, properly construed, require a member-State to grant leave to enter and reside in its territory to the spouse, of whatever nationality, of a national of that State who has gone, with that spouse, to another member-State in order to work there as an employed person as envisaged by **Article 48** EEC and returns to establish himself or herself as envisaged by **Article 52** EEC in the State of which he or she is a national. A spouse must enjoy at least the same rights as would be granted to him or her under Community law if his or her spouse entered and resided in another member-State.

[1992] 3 C.M.L.R. 358

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