

JUDGMENT OF THE COURT
7 July 1992 *

In Case C-369/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal Superior de Justicia, Cantabria, for a preliminary ruling in the proceedings pending before that court between

Mario Vicente Micheletti and Others

and

Delegación del Gobierno en Cantabria

on the interpretation of Articles 3(c), 7, 52, 53 and 56 of the EEC Treaty and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14), and of the corresponding provisions of secondary legislation on freedom of movement and freedom of establishment for persons,

THE COURT,

composed of: O. Due, President, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Díez de Velasco, M. Zuleeg and J. L. Murray, Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: Spanish.

after considering the written observations submitted on behalf of:

- Mario Vicente Micheletti, by María del Carmen Simón-Altuna Moreno, Procuradora de los Tribunales, and Miguel Trueba Arguiñarena, of the Cantabria Bar,

- the Spanish Government, by Carlos Bastarreche Sagües, Director-General for Community Legal and Institutional Co-ordination, and Antonio Hierro Hernández-Mora, Abogado del Estado, a member of the State Legal Department for matters before the Court of Justice, acting as Agents,

- the Italian Government, by Luigi Ferrari Bravo, Head of the Department for Legal Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Giorgio Ferri, Avvocato dello Stato,

- the Commission of the European Communities, by Étienne Lasnet, Legal Adviser, and Daniel Calleja, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiff in the main proceedings, the Spanish Government, represented by Gloria Calvo Díaz, acting as Agent, and the Commission, at the hearing on 3 December 1991,

after hearing the Opinion of the Advocate General at the sitting on 30 January 1992,

gives the following

Judgment

- 1 By order of 1 December 1990, which was received at the Court on 14 December 1990, the Tribunal Superior de Justicia (High Court), Cantabria, referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 3(c), 7, 52, 53 and 56 of the EEC Treaty and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14).

- 2 The question was raised in proceedings between Mario Vicente Micheletti and the Delegación del Gobierno (Regional Office of the Ministry of the Interior), Cantabria. Mr Micheletti has dual Argentine and Italian nationality, having acquired the latter in accordance with Article 1 of Law No 555 of 13 June 1912 (*Gazzetta Ufficiale della Repubblica Italiana* of 30 June 1912), which, as amended by Article 5 of Law No 123 of 21 April 1983 (*Gazzetta Ufficiale della Repubblica Italiana* of 26 April 1983), provides that the child of an Italian mother or father is an Italian citizen.

- 3 It is apparent from the order for reference that on 13 January 1989 the Spanish Ministry of Education and Science officially recognized Mr Micheletti's university degree in dentistry under a cultural cooperation agreement between Spain and Argentina. On 3 March 1989, Mr Micheletti applied to the Spanish authorities for a temporary Community residence card, submitting for that purpose a valid Italian passport issued by the Italian Consulate in Rosario, Argentina. On 23 March 1989, the Spanish authorities issued the card requested, which was valid for a period of six months.

- 4 Before the expiry of that period, Mr Micheletti applied to the Spanish authorities for a permanent residence card as a Community national in order to set up as a dentist in Spain. That application and a subsequent administrative appeal were dismissed, whereupon he brought proceedings before the national court for the

annulment of the Spanish authorities' decision, recognition of his right to obtain a Community national's residence card enabling him to practise as a dentist and the issue of residence cards for the members of his family.

- 5 The Spanish authorities' decision was based on Article 9 of the Spanish Civil Code, according to which, in cases of dual nationality where neither nationality is Spanish, the nationality corresponding to the habitual residence of the person concerned before his arrival in Spain is to take precedence, that being Argentine nationality in the case of the plaintiff in the main proceedings.

- 6 The national court, considering that the solution of the dispute called for an interpretation of Community law, stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'May Articles 3(c), 7, 52, 53 and 56 of the EEC Treaty, and Directive 73/148 and the relevant provisions of secondary law on the free movement of persons and freedom of establishment be interpreted as being compatible and thus as allowing the application of domestic legislation which does not recognize the "Community rights" inherent in a person's status as a national of another Member State of the EEC merely because that person simultaneously possesses the nationality of a non-member country and that country was the place of his habitual residence, his last residence or his actual residence?'

- 7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, 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.

- 8 The national court's question seeks essentially to determine whether the provisions of Community law concerning freedom of establishment preclude a Member State from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State deems him to be a national of the non-member country.
- 9 In answering that question, it must be borne in mind that Article 52 of the Treaty grants freedom of establishment to persons who are 'nationals of a Member State'.
- 10 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. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.
- 11 Consequently, it is not permissible to interpret Article 52 of the Treaty to the effect that, where a national of a Member State is also a national of a non-member country, the other Member States may make recognition of the status of Community national subject to a condition such as the habitual residence of the person concerned in the territory of the first Member State.
- 12 That conclusion is reinforced by the fact that the consequence of allowing such a possibility would be that the class of persons to whom the Community rules on freedom of establishment were applied might vary from one Member State to another.

- 13 In keeping with that interpretation, Directive 73/148 provides that Member States are to grant to the persons referred to in Article 1 the right to enter their territory merely on production of a valid identity card or passport (Article 3) and are to issue a residence card or permit to such persons, and to those mentioned in Article 4, upon production, in particular, of the document with which they entered their territory (Article 6).

- 14 Thus, once the persons concerned have produced one of the documents mentioned in Directive 73/148 in order to establish their status as nationals of a Member State, the other Member States are not entitled to challenge that status on the ground that the persons concerned might also have the nationality of a non-member country which, under the legislation of the host Member State, overrides that of the Member State.

- 15 The answer to the question submitted must therefore be that the provisions of Community law on freedom of establishment preclude a Member State from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State deems him to be a national of the non-member country.

Costs

- 16 The costs incurred by the Spanish and Italian Governments and the Commission of the European Communities, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunal Superior de Justicia de Cantabria by order of 1 December 1990, hereby rules:

The provisions of Community law on freedom of establishment preclude a Member State from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State deems him to be a national of the non-member country.

Due	Schockweiler	Grévisse	Kapteyn
Mancini	Kakouris	Moitinho de Almeida	
Rodríguez Iglesias	Díez de Velasco	Zuleeg	Murray

Delivered in open court in Luxembourg on 7 July 1992.

J.-G. Giraud
Registrar

O. Due
President