

Case C-378/97

Criminal proceedings against Florus Ariël Wijsenbeek

(Reference for a preliminary ruling
from the Arrondissementsrechtbank te Rotterdam)

(Freedom of movement for persons — Right of citizens of the European Union to move and reside freely — Border controls — National legislation requiring persons coming from another Member State to present a passport)

Opinion of Advocate General Cosmas delivered on 16 March 1999. I-6209
Judgment of the Court, 21 September 1999. I-6251

Summary of the Judgment

1. *EC Treaty — Expiry of the period allowed for establishment of the internal market — Effects — Whether Member States are required to abolish controls of persons at the Community's internal frontiers — No such obligation in the absence of legislation from the Council*
(*EC Treaty, Art. 7a (now, after amendment, Art. 14 EC)*)

2. *Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — Exercise of that right subject, in the absence of common or harmonised laws, to establishing possession of the nationality of a Member State (EC Treaty, Art 8a (now, after amendment, Art. 18 EC))*
3. *Citizenship of the European Union — Requirement that nationality be established when crossing the Community's internal frontiers — Whether permissible in the absence of common or harmonised laws on the crossing of external borders — Penalties for infringement — Conditions governing permissibility (EC Treaty, Arts 7a and 8a (now, after amendment, Arts 14 EC and 18 EC))*

1. Article 7a of the Treaty (now, after amendment, Article 14 EC), which provides that the Community is to adopt measures with the aim of progressively establishing the internal market before 31 December 1992, cannot be interpreted as meaning that, in the absence of measures adopted before that date by the Council requiring the Member States to abolish controls of persons at the internal frontiers of the Community, that obligation automatically arises upon the expiry of that deadline.

Such an obligation presupposes harmonisation of the laws of the Member States governing the crossing of the Community's external borders, immigration, the grant of visas, asylum and the exchange of information on those questions.

2. As long as Community provisions have not been adopted concerning controls at the Community's external borders — which would also entail common or harmonised rules on the con-

ditions governing entry, visas and asylum — the exercise of the rights conferred upon citizens of the Union by Article 8a of the Treaty (now, after amendment, Article 18 EC) presupposes that the person concerned is able to establish that he or she has the nationality of a Member State.

3. In the absence of common rules or harmonisation of the legislation of the Member States concerning controls at the Community's external borders, immigration policy, visas and asylum, neither Article 7a nor Article 8a of the Treaty (now, after amendment, Articles 14 EC and 18 EC) precludes a Member State from requiring a person, whether or not a citizen of the European Union, to establish, on pain of criminal penalties, his nationality upon entering the territory of that Member State over one of the Community's internal frontiers, provided that the penalties applicable are comparable to those which apply to similar infringements of domestic law and are not disproportionate, thus creating an obstacle to the free movement of persons.