JUDGMENT OF THE COURT (Second Chamber)

22 December 2010*

In Case C-208/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgerichtshof (Austria), made by decision of 18 May 2009, received at the Court on 10 June 2009, in the proceedings

Ilonka Sayn-Wittgenstein

v

Landeshauptmann von Wien,

* Language of the case: German.

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Rosas (Rapporteur), U. Lõhmus, A. Ó Caoimh and P. Lindh, Judges,

Advocate General: E. Sharpston,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2010,

after considering the observations submitted on behalf of:

— Mrs Sayn-Wittgenstein, by J. Rieck, Rechtsanwalt,

— the Austrian Government, by C. Pesendorfer and E. Handl-Petz, acting as Agents,

— the Czech Government, by D. Hadroušek, acting as Agent,

— the German Government, by M. Lumma, J. Möller and J. Kemper, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and M. Russo, avvocato dello Stato,

— the Lithuanian Government, by R. Mackevičienė and V. Kazlauskaitė-Švenčionienė, acting as Agents,

— the Slovak Government, by B. Ricziová, acting as Agent,

— the European Commission, by D. Maidani and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 October 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 21 TFEU.

2 The reference has been made in proceedings between Mrs Sayn-Wittgenstein, an Austrian national resident in Germany, and the Landeshauptmann von Wien (Head of Government of the Province of Vienna) regarding the latter's decision to correct the entry in the register of civil status of the family name 'Fürstin von Sayn-Wittgenstein'

acquired in Germany following an adoption by a German national, and to replace it with the name 'Sayn-Wittgenstein.'

Legal context

Austrian law

Law on abolition of the nobility and implementing provisions

3 The Law on the abolition of the nobility, the secular orders of knighthood and of ladies, and certain titles and ranks (Gesetz über die Aufhebung des Adels, der weltlichen Ritter- und Damenorden und gewisser Titel und Würden) of 3 April 1919 (StGBl. 211/1919), in the version applicable to the main proceedings (StGBl. 1/1920; 'the Law on the abolition of the nobility'), has constitutional status under Article 149(1) of the Federal Constitutional Law (Bundes-Verfassungsgesetz).

4 Paragraph 1 of the Law on the abolition of the nobility provides:

'The nobility, its honorary privileges associated with display of that status, and titles and ranks granted merely for the purposes of distinguishing their holder and unconnected with an official post, a profession or an academic or artistic ability, and the associated honorary privileges of Austrian citizens, shall be abolished.'

5 Paragraph 4 of the Law on the abolition of the nobility provides:

'The decision with regard to which titles and ranks must be considered abolished pursuant to paragraph 1 falls within the jurisdiction of the Minister of State for the Interior and Education.'

6 The implementing provisions adopted by the Ministry for the Interior and Education and the Ministry of Justice, in agreement with the other ministries involved, concerning the abolition of the nobility and of certain titles and ranks (Vollzugsanweisung des Staatsamtes für Inneres und Unterricht und des Staatsamtes für Justiz, im Einvernehmen mit den beteiligten Staatsämtern über die Aufhebung des Adels und gewisser Titel und Würden) of 18 April 1919 (StGBl. 237/1919) provide in Paragraph 1:

'The abolition of the nobility, its honorary privileges associated with display of that status, and titles and ranks granted merely for the purposes of distinguishing their holder and unconnected with an official post, a profession or an academic or artistic ability, and the associated honorary privileges, concerns all Austrian citizens, whether or not those privileges were acquired in Austria or in a foreign country.'

7 Paragraph 2 of the implementing provisions states:

'Under paragraph 1 of the [Law on the abolition of the nobility] the following shall be abolished:

1. The right to use the nobiliary particle "von";

…

4. The right to use designations of noble status, such as knight ("Ritter"), baron ("Freiherr"), count ("Graf") and prince ("Fürst"), the honorary title of duke ("Herzog") and other relevant Austrian or foreign designations of status; …

…'

8 Paragraph 5 of the implementing provisions prescribes various sanctions in the case of non-compliance with that prohibition.

Rules of private international law

9 Paragraph 9(1), first sentence, of the Federal Law on private international law (Bundesgesetz über das internationale Privatrecht) of 15 June 1978 (BGBl. 304/1978), in the version applicable to the main proceedings (BGBl. I 58/2004), provides that the law governing the personal status of a natural person is that of the State of which that person is a national.

10 According to Paragraph 13(1) of that Law, the name a person bears is determined according to the rules governing his personal status, irrespective of the basis on which that name was acquired.

11 Paragraph 26 of that Law provides that the conditions for adoption are determined by the law governing the personal status of each adopting person and the adopted person, whereas the effects of the adoption are determined, in the case of adoption by only one person, by the law governing the personal status of the adopting person. According to the observations submitted by the Republic of Austria and the authors cited by it, the effects so determined are only those which fall within the scope of family law and do not include the determination of the name of the adopted person, which remains governed by Paragraph 13(1) of the Federal Law on private international law.

Rules of civil law

12 Paragraph 183(1) of the Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch), in the version applicable to the main proceedings (BGBl. 25/1995), provides:

'Where the adopted child is adopted by only one person and the ties arising under family law with the other parent, in the sense of Paragraph 182(2), second sentence, cease to exist, the adopted child shall be given the family name of the adoptive parent …'

Law on civil status

13 Paragraph 15(1) of the Law on civil status (Personenstandsgesetz, BGBl. 60/1983) requires that an entry be corrected if it was incorrect when it was made.

German law

Rules concerning the abolition of the nobility

14 Article 109 of the Constitution of the German Empire (Verfassung des Deutschen Reichs), adopted on 11 August 1919 at Weimar, inter alia abolished all privileges based on birth or status and declared that titles of nobility were henceforth to be regarded only as an element of a surname and could no longer be conferred.

15 By virtue of Article 123(1) of the Basic Law (Grundgesetz), that provision is still in force and has the status of ordinary federal law (judgments of the Bundesverwaltungsgericht (Federal Administrative Court) of 11 March 1966 and of 11 December 1996).

Rules of private international law

16 Paragraph 10(1) of the Law introducing the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch; 'the EGBGB') provides:

'A person's name shall be governed by the law of the State of which that person is a national.'

17 Paragraph 22(1) and (2) of the EGBGB provide that adoption and its effects on the legal relationships under family law between the persons concerned, are governed by the law of the State of the adopting person's nationality.

18 It is stated in the order for reference and has been confirmed by the German Government that the effects of the adoption in relation to the determination of the name are, however, to be assessed under the law of the State of which the adopted child is a national, in accordance with Paragraph 10(1) of the EGBGB. German international private law provides that the nationality of the person constitutes the connecting factor for the purposes of deciding which law applies to the determination of the surname.

The dispute in the main proceedings and the question referred for a preliminary ruling

19 The applicant in the main proceedings was born in Vienna, Austria, in 1944 and is an Austrian citizen.

20 By order of 14 October 1991, under Paragraphs 1752 and 1767 of the German Civil Code (Bürgerliches Gesetzbuch), the Kreisgericht Worbis (District Court, Worbis, Germany) pronounced the adoption by a German citizen, Mr Lothar Fürst von Sayn-Wittgenstein, of the applicant in the main proceedings. It is not in dispute that the adoption did not have any effect on her nationality.

21 The applicant in the main proceedings lived in Germany at the time of her adoption and still lives there. The referring court does not state in what capacity the applicant in the main proceedings resides in Germany. However, at the hearing, her representative stated that she is professionally active principally in Germany, but also elsewhere, in the luxury real estate sector. She is involved in particular, under the name Ilonka Fürstin von Sayn-Wittgenstein, in the sale of castles and stately homes.

22 By supplementary order of 24 January 1992, the Kreisgericht Worbis stated that, following the adoption, the applicant in the main proceedings had acquired the surname of her adoptive father as her name at birth, in the form 'Fürstin von Sayn-Wittgenstein', which would be the name she would use.

23 The Austrian authorities registered that surname in the Austrian register of civil status.

24 It became apparent, from the answers to the questions posed by the Court with a view to the hearing, and at the hearing, that the applicant in the main proceedings was issued with a German driving licence in the name of Ilonka Fürstin von Sayn-Wittgenstein and formed a company in Germany under that name. In addition, her Austrian passport has been renewed at least once, in the course of 2001, in the name of Ilonka Fürstin von Sayn-Wittgenstein and two certificates of nationality have been issued by the Austrian consular authorities in Germany in that name.

25 On 27 November 2003, the Verfassungsgerichtshof (Constitutional Court, Austria) delivered a judgment in a case concerning a situation similar to that of the applicant in the main proceedings. Summing up the state of Austrian law, it held that the Law on the abolition of the nobility, which is of constitutional status and implements the principle of equal treatment in this field, precludes an Austrian citizen from acquiring a surname which includes a former title of nobility by means of adoption by a German national who is permitted to bear that title as a constituent element of his name: in accordance with the Law on the abolition of the nobility, Austrian citizens are not authorised to bear titles of nobility, including those of foreign origin. That judgment, in addition, confirmed earlier case-law according to which Austrian law, contrary to German law, does not permit surnames to be formed according to rules that are different for men and women.

26 Prompted by that judgment, the Landeshauptmann von Wien took the view that the birth certificate of the applicant in the main proceedings following adoption was incorrect. By letter of 5 April 2007, referring to that judgment, he informed the applicant in the main proceedings of his intention to correct the surname in the register of civil status to 'Sayn-Wittgenstein'.

27 Despite the objections raised by the applicant in the main proceedings, who referred, inter alia, to her right, based on European Union law, to travel within the Member States without having to change her name, the Landeshauptmann von Wien issued a

decision on 24 August 2007 that her family name had henceforth to be registered, by means of a correction to the entry in the register of civil status, as 'Sayn-Wittgenstein'.

28 When her administrative appeal against that decision was rejected by decision of 31 March 2008, the applicant in the main proceedings applied to the Verwaltungsgerichtshof (Administrative Court) for annulment of the latter decision.

29 Before that court, the applicant in the main proceedings relies in particular on her rights to freedom of movement and to provide services, as guaranteed by the Treaties.

30 According to the applicant in the main proceedings, the non-recognition of the effects of the adoption with regard to the law governing names amounts to an obstacle to the freedom of movement of persons because she would have to use different surnames in different Member States. She considers, in relation to public policy, that Member States are mutually obliged to restrict its application to the most necessary and most intolerable cases and, as to the remainder, show maximum trust in and recognise the decisions of the other Member States. The application of public policy also presupposes a strong connection which cannot be created by mere citizenship.

31 The applicant in the main proceedings also argues that an amendment of the surname 'Fürstin von Sayn-Wittgenstein' which she has used continuously for 15 years constitutes interference with the right to respect for family life guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. Whilst it is legislation — in the present case the Austrian Law on civil status — that permits interference with that right,

the interference is with an established right, acquired in good faith, which may not be interfered with without a particular necessity to do so.

32 The Landeshauptmann von Wien contends before the Verwaltungsgerichtshof that the action should be dismissed. He argues, in particular, that, in the present case, there is nothing that would lead to an infringement of the right of freedom of movement provided for in Article 21 TFEU and to serious inconvenience for the applicant in the main proceedings, such as described in Case C-353/06 *Grunkin and Paul* [2008] ECR I-7639. She is not being required to use different names, merely to remove the noble element 'Fürstin von' from the surname 'Sayn-Wittgenstein', which remains unchanged. Even if the applicant in the main proceedings were to suffer some professional or personal inconvenience as a result of the correction to the birth register, that inconvenience should not be accorded an importance which would justify ignoring the Law on the abolition of the nobility which enjoys constitutional status, went hand in hand with the creation of the Republic of Austria and implemented, in this field, the principle of equal treatment. Otherwise, a serious infringement of the fundamental values on which the Austrian legal order is based would occur.

33 Finally, the Landeshauptmann von Wien submits that, according to the German choice-of-law rules, the name of a person is determined by the law of the State of which that person is a national. If it had correctly applied the law, the Kreisgericht Worbis should have come to the conclusion that the name of the applicant in the main proceedings had to be determined by applying Austrian law. Since the form 'Fürstin von Sayn-Wittgenstein' is not authorised under Austrian law, its attribution to the applicant in the main proceedings is also incorrect under German law.

34 The Verwaltungsgerichtshof considers that the applicant in the main proceedings, an Austrian national who resides in Germany, may, in principle, rely on Article 21 TFEU. Pointing out that the Court did not, in *Grunkin and Paul*, have occasion to rule on questions concerning public policy when it determined that an obstacle to freedom of movement could be justified only if it were based on objective considerations and

were proportionate to the legitimate aim pursued, it enquires whether, in the present case, a restriction on freedom of movement liable to result from a change to the surname of the applicant in the main proceedings could nevertheless be justified in the light of the prohibition, which has constitutional status, of the use of titles of nobility, to the extent that that rule precludes Austrian citizens from using those titles, even if there is a basis in German law for their use.

35 In those circumstances, the Verwaltungsgerichtshof decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article [21 TFEU] preclude legislation pursuant to which the competent authorities of a Member State refuse to recognise the surname of an (adult) adoptee, determined in another Member State, in so far as it contains a title of nobility which is not permissible under the (constitutional) law of the former Member State?'

Consideration of the question

36 By its question, the referring court asks, in essence, whether Article 21 TFEU must be interpreted as precluding the authorities of a Member State, in circumstances such as those in the main proceedings, from refusing to recognise all the elements of the surname of a national of that State, as determined in another Member State — in which

that national resides — at the time of his or her adoption as an adult by a national of that other Member State, where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law.

Preliminary observations on the applicable provisions of European Union law

37 As a preliminary point, it must be found that the situation of the applicant in the main proceedings falls within the substantive scope of European Union law.

38 Although, as European Union law stands at present, the rules governing a person's surname and the use of titles of nobility are matters coming within the competence of the Member States, the latter must none the less, when exercising that competence, comply with European Union law (see, to that effect, *Grunkin and Paul*, paragraph 16).

39 It is common ground that the applicant in the main proceedings is a national of a Member State and, in her capacity as citizen of the Union, has made use of the freedom to move to and reside in another Member State. She is therefore entitled to rely on the freedoms conferred by Article 21 TFEU on all citizens of the Union.

40 In addition, it was stated at the hearing that the applicant in the main proceedings engages in a professional activity in Germany providing services to recipients in one or more other Member States. She would therefore also be entitled, in principle, to rely on the freedoms recognised under Article 56 TFEU.

41 It is common ground that, in the present case, the referring court asks the Court about the interpretation of Article 21 TFEU, in conjunction with the judgment in *Grunkin and Paul*, and the non-recognition in a Member State of a surname obtained in another Member State, irrespective of whether the person concerned engaged in an economic activity. It is noteworthy, in that regard, that the referring court does not consider it necessary to state in what capacity the applicant in the main proceedings resides in Germany. By its question, it wishes in essence to ascertain whether reasons of a constitutional nature may authorise a Member State not to recognise all the elements of a name obtained by one of its nationals in another Member State and not whether a failure to recognise a name legally acquired in another Member State constitutes an obstacle to the freedom to provide services guaranteed by Article 56 TFEU.

42 It is therefore necessary to examine in the light of Article 21 TFEU the refusal by the authorities of a Member State to recognise all the elements of a surname of a national of that State obtained by means of adoption in another Member State, in which that national resides.

Existence of a restriction on the freedom of movement and residence enjoyed by citizens of the Union

Observations submitted to the Court

43 The applicant in the main proceedings submits that the non-recognition, in application of the Austrian rules prohibiting titles of nobility, of the noble elements of the name lawfully acquired in Germany pursuant to a judicial decision which can no longer be challenged and which is therefore legally binding in the German legal order

has the consequence that, in the identity documents which will be issued to her in Austria, her name will be written differently from the name she must use in Germany. It follows from *Grunkin and Paul* that the failure by one Member State to recognise a name acquired in another Member State and the resulting obligation to use different names in those two Member States infringe the right of every citizen of the Union to freedom of movement under Article 21(1) TFEU.

44 The governments which submitted observations to the Court consider by contrast that there is no obstacle to the freedom of movement of the applicant in the main proceedings.

45 According to the Austrian and German Governments, first, the situation which has given rise to the dispute in the main proceedings is distinct from the obligation, for a person who has exercised the right to move and reside freely within the territory of another Member State, to use, in the Member State of which he holds the nationality, a name different from that already accorded and registered in the Member State of birth and of residence, categorised as an obstacle in *Grunkin and Paul*. Since the applicant in the main proceedings is an Austrian national, born in Austria, she can prove her identity only on the basis of papers and documents issued by the Austrian authorities. There is no entry relating to the applicant in the main proceedings in the German register of civil status, meaning that there can be no divergence with regard to the forms in which her surname is entered in the registers in Germany and Austria.

46 Second, the fact that, in a Member State, a title of nobility may not form an integral part of the family name under the national law applicable to the formation of names in that State does not result in any inconvenience for a national of a Member State with regard to the guarantee of freedom of movement. No inconvenience of the type referred to in the case which gave rise to the judgment in *Grunkin and Paul* can be envisaged in the present case. In particular, the correction of the name entered in the

Austrian register of civil status does not give rise to any actual risk of doubt concerning the identity of the applicant in the main proceedings.

47 According to the Austrian Government, even if, applying Austrian law, the title of nobility 'Fürst' and nobiliary particle 'von' are removed, the essential elements characterising the surname are retained. According to that government, if the applicant in the main proceedings uses the name 'Fürstin von Sayn-Wittgenstein' in Germany in her daily life and if she produces proof of her identity in the name of Mrs Sayn-Wittgenstein, the German authorities will always be able to identify her clearly and to recognise her, in particular as no linguistic barrier exists between Germany and Austria.

48 The Czech Government considers that the non-recognition in one Member State of part of the name authorised in another Member State, applying legislation such as that at issue in the main proceedings, does not constitute an infringement of Article 21 TFEU. The function of titles differs substantially from that of surnames. Whereas the surname has the function of identifying its bearer, the title has the function of conferring a certain social status on a person. It falls within the exclusive competence of each Member State to decide whether it wishes to confer a certain social status on a particular person.

49 The Italian Government considers that the main proceedings do not appear to reveal any inconvenience of the type referred to in *Grunkin and Paul*, in the form of potential disadvantages resulting from the discrepancy in family names accorded by different Member States to the same person. What is at issue is not a discrepancy in family names but rather the presence or absence, as a complement to the family name, of a title of nobility. Such a title points to a particular social status and is distinct from the family name, which alone actually identifies the person. No risk of a doubt concerning

the person's identity or the veracity of the documents concerning him can arise from the presence or absence in those documents of a reference to that title of nobility.

50 The Slovak Government states that, under Austrian and German rules of private international law, the name of a person is determined by the law of the State of which that person is a national. According to the international conventions to which the Federal Republic of Germany is a contracting party, forenames and surnames are governed in principle by the law of the State of which the person is a national, and a contracting State must refuse to approve any change to the surname of nationals of another contracting State if they are not also its own nationals.

51 The European Commission considers that Article 21 TFEU precludes, in principle, the non-recognition of constituent elements of a name lawfully acquired in a Member State other than that of which the person concerned is a national. It is, in principle, incompatible with the fundamental status of citizenship of the Union conferred on nationals of the Member States to refuse to allow citizens of the Union who have exercised their right to freedom of movement to use, in their Member State of origin, a family name lawfully acquired by adoption in another Member State. It cannot however be ruled out that particular reasons may justify restriction of the freedom of movement of persons in a case such as that which forms the subject-matter of the dispute in the main proceedings.

Answer of the Court

52 It must be noted as a preliminary point that a person's name is a constituent element of his identity and of his private life, the protection of which is enshrined in Article 7 of the Charter of Fundamental Rights of the European Union and in Article 8 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms. Even though Article 8 of that convention does not refer to it explicitly, a person's name, as a means of personal identification and a link to a family, none the less concerns his or her private and family life (see, inter alia, European Court of Human Rights judgments *Burghartz v. Switzerland* of 22 February 1994, Series A No 280-B, p. 28, § 24, and *Stjerna v. Finland* of 25 November 1994, Series A No 299-B, p. 60, § 37).

53 National legislation which places certain of the nationals of the Member State concerned at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 21(1) TFEU on every citizen of the Union (see, inter alia, *Grunkin and Paul*, paragraph 21; Case C-221/07 *Zablocka-Weyhermüller* [2008] ECR I-9029, paragraph 35; and Case C-544/07 *Rüffler* [2009] ECR I-3389, paragraph 73).

54 According to the case-law of the Court, obliging a person who has exercised his right to move and reside freely in the territory of another Member State to use a surname, in the Member State of which he a national, which is different from that already conferred and registered in the Member State of birth and residence is liable to hamper the exercise of the right, established in Article 21 TFEU, to move and reside freely within the territory of the Member States (*Grunkin and Paul*, paragraphs 21 and 22).

55 In Case C-148/02 *Garcia Avello* [2003] ECR I-11613, the Court held legislation of a Member State which obliged a person to use different family names in different Member States to be incompatible with Articles 12 EC and 17 EC. In that context the Court held, as regards children with the nationality of two Member States, that a discrepancy in surnames is liable to cause serious inconvenience for those concerned at both professional and private levels resulting from, inter alia, difficulties in benefiting, in the Member State of which they are nationals, from the legal effects of diplomas or documents drawn up in the name recognised in another Member State of which they

are also nationals. The person concerned may also encounter difficulties linked inter alia to the drawing up of certificates or diplomas which clearly reveal a name that differs from his surname. That fact may give rise to doubts as to the person's identity, the authenticity of the documents submitted or the veracity of their content (see, to that effect, *Garcia Avello*, paragraph 36).

56 The Court held in paragraph 24 of *Grunkin and Paul* that such serious inconvenience may likewise arise where the child concerned holds the nationality of only one Member State, but that State of origin refuses to recognise the family name acquired by the child in the State of birth and residence.

57 The Austrian and German Governments argue that the main proceedings can be distinguished from the case which gave rise to the judgment in *Grunkin and Paul*, since that case concerned refusal of recognition, in a Member State, of a name in a form lawfully entered in their registers by the authorities responsible for civil status matters of another Member State acting within the powers conferred upon them. The situation which gave rise to that case is said to result from the fact that, in the State of birth and residence, the determination of the name was linked to the place of residence, whereas, in the State of which the person concerned was a national, it was linked to nationality. By contrast, according to the Austrian and German Governments, the substantive law applicable in the main proceedings, determined by both German and Austrian choice-of-law rules, is only Austrian law.

58 According to those governments, the Kreisgericht Worbis therefore did not have the power, whether under German or Austrian law, to determine the surname of the applicant in the main proceedings as it did, given the fact that the surname established by it was unlawful under Austrian law in two respects — first because it included a former title of nobility and the particle 'von' and second because a feminine form was

used. In contrast to the case which gave rise to the judgment in *Grunkin and Paul*, the various national authorities did not enter different surnames in the registers of civil status. Consequently, the entry corrected in Austria does not, in their submission, concern a surname which was validly conferred in another Member State, but a name accorded in error, first by the Kreisgericht Worbis, then by the Austrian authorities responsible for civil status matters.

59 In addition, a number of the governments which submitted observations to the Court argue that the applicant in the main proceedings will not suffer any inconvenience if her surname in the Austrian civil status register is corrected. First, she will not be obliged to use different surnames in different Member States, since the corrected entry in that register will thereafter be authentic in all circumstances. Second, the central identifying element of her surname, Sayn-Wittgenstein, will remain, and all confusion as to her identity will accordingly be ruled out, with only the additional and none-defining element 'Fürstin von' having been removed.

60 In that regard, it should be pointed out first that, according to the information contained in the file, the name of the applicant in the main proceedings appears in only one register of civil status, that is to say the Austrian register, and that only the Austrian authorities may issue her with official documents, such as a passport or a nationality certificate, so that alteration of the name entered will not cause any conflict with the registers of civil status held, or such official documents issued, by another Member State.

61 It should be noted, next, that numerous everyday dealings, in both the public and private spheres, require proof of identity, which is usually provided by a passport. Since the applicant in the main proceedings has only Austrian nationality, the issuing of that document falls within the exclusive competence of the Austrian authorities.

62 It was however stated at the hearing that the applicant in the main proceedings was issued with a passport in the name of 'Fürstin von Sayn-Wittgenstein' by the Austrian consular authorities in Germany during the 15 years between the first registration of her surname as 'Fürstin von Sayn-Wittgenstein' in Austria and the decision to correct it to 'Sayn-Wittgenstein'. Moreover, according to the information contained in the file, the applicant in the main proceedings was issued in Germany with a German driving licence and also owns a company there registered in the companies register, under the name 'Ilonka Fürstin von Sayn-Wittgenstein'.

63 As the Advocate General stated in point 44 of her Opinion, it is probable that the applicant in the main proceedings was registered with the German authorities as a non-German resident and that she has a social security record in Germany, for health insurance and pension purposes. In addition to such official records of her name, she will no doubt, over the 15 years between the first registration of her surname as 'Fürstin von Sayn-Wittgenstein' in Austria and the decision to rectify it to 'Sayn-Wittgenstein', have opened bank accounts and entered into ongoing contracts, such as insurance contracts, in Germany. She has thus lived for a considerable time in a Member State under a particular name, which will have left many traces of a formal nature in both the public and the private sphere.

64 With regard, finally, to the argument that the correction of the name of the applicant in the main proceedings would not cause any problems regarding proof of her identity, since only the title of nobility 'Fürstin von' would not be recognised, the fact must be taken into consideration that, under German law, the words 'Fürstin von' are regarded not as a title of nobility but as a constituent element of the name lawfully acquired in the State of residence.

65 Consequently, the name 'Fürstin von Sayn-Wittgenstein' is in Germany a single surname composed of a number of elements. Just as, in the case which gave rise to

the judgment in *Grunkin and Paul*, the name 'Grunkin-Paul' was different from the names 'Grunkin' and 'Paul', in the main proceedings the names 'Fürstin von Sayn-Wittgenstein' and 'Sayn-Wittgenstein' are not identical.

66 Confusion and inconvenience are liable to arise from a divergence between the two names used for the same person.

67 Thus, for the applicant in the main proceedings, 'serious inconvenience' within the meaning of *Grunkin and Paul* results from having to alter all the traces of a formal nature of the name 'Fürstin von Sayn-Wittgenstein' left in both the public and the private spheres, given that her official identity documents currently refer to her by a different name. Even if, once carried out, the alteration will eliminate all future divergence, it is probable that the applicant in the main proceedings is in possession of and will be required to produce documents issued or drawn up before the alteration, which show a different surname from that appearing in her new identity documents.

68 Consequently, every time the applicant in the main proceedings, holding a passport in the name of 'Sayn-Wittgenstein', is obliged to prove her identity or her family name in Germany, her State of residence, she risks having to dispel suspicion of false declaration caused by the divergence between the corrected name which appears in her Austrian identity documents and the name which she has used for 15 years in her daily life, which was recognised in Austria until the correction in question and which is given in the documents drawn up in her regard in Germany, such as her driving licence.

69 The Court has already held that, every time the surname used in a specific situation does not correspond to that on the document submitted as proof of a person's identity, or the surname in two documents submitted together is not the same, such a difference in surnames is liable to give rise to doubts as to the person's identity and the

authenticity of the documents submitted, or the veracity of their content (*Grunkin and Paul*, paragraph 28).

70 Even if that risk may not be as grave as the serious inconvenience to be feared for the child in question in the case which gave rise to the judgment in *Grunkin and Paul*, the real risk, in circumstances such as those in the main proceedings, of being obliged because of the discrepancy in names to dispel doubts as to one's identity is such as to hinder the exercise of the right which flows from Article 21 TFEU.

71 Consequently, the refusal, by the authorities of a Member State, to recognise all the elements of the surname of a national of that State as determined in another Member State, in which that national resides, and as entered for 15 years in the register of civil status of the first Member State, is a restriction on the freedoms conferred by Article 21 TFEU on every citizen of the Union.

Existence of a justification for the restriction on the freedom of movement and residence enjoyed by citizens of the Union

Observations submitted to the Court

72 According to the applicant in the main proceedings, the application of public policy always presupposes the existence of a sufficient connection with the Member State concerned. However, in her case, the sufficient connection with that State is lacking, because since the date of her adoption she has resided in Germany.

73 The Austrian, Czech, Italian, Lithuanian and Slovak Governments contend that, should the Court consider the refusal to recognise certain elements of a surname, pursuant to the Law on the abolition of the nobility, to be an obstacle to the freedom of movement of citizens of the Union, such an obstacle is justified by objective considerations and is proportionate to the objective pursued.

74 The Austrian Government contends, in particular, that the provisions at issue in the main proceedings are intended to protect the constitutional identity of the Republic of Austria. The Law on the abolition of the nobility, even if it is not an element of the republican principle which underlies the Federal Constitutional Law, constitutes a fundamental decision in favour of the formal equality of treatment of all citizens before the law; no Austrian citizen may be singled out by additional elements of a name in the form of appellations pertaining to nobility, titles or ranks, the only function of which is to distinguish their bearer from other persons and which have no connection with his profession or education.

75 For the Austrian Government, any restrictions on the rights of free movement which would result for Austrian citizens from the application of the provisions at issue in the main proceedings are therefore justified in the light of the history and fundamental values of the Republic of Austria. In addition, those provisions do not restrict the exercise of the rights of free movement more than is necessary in order to achieve the abovementioned objective.

76 The Austrian Government also submits that it would infringe public policy in Austria if it were necessary to recognise the surname of the applicant in the main proceedings corresponding to the surname of the adopting parent in its feminine form, as determined in Germany by the order of the Kreisgericht Worbis of 24 January 1992. That recognition would be incompatible with the fundamental values of the Austrian legal order, in particular with the principle of equal treatment enshrined in Article 7 of the Federal Constitutional Law and implemented by the Law on the abolition of the nobility.

77 The Czech Government contends that whilst, according to the case-law of the Court, differences established in the law of the Member States relating to persons' names may lead to the infringement of the FEU Treaty, that cannot be the case in two situations, that is to say, where the name incorporates a title of nobility which the person concerned may not use in the Member State of which he is a national and where the name incorporates a designation which would be contrary to public policy in another Member State.

78 The Italian and Slovak Governments consider that, if a restriction on the freedom of movement of persons is established, it corresponds to a legitimate objective, consisting of compliance with a provision of constitutional law which expresses a principle of public policy the status of which is fundamental in the republican order. The prohibition on registration of a family name from which the noble elements have not been removed is based on objective considerations and is proportionate to the intended objective, since only by such a measure can that objective be achieved.

79 Similarly, the Lithuanian Government considers that, where it is necessary to protect the fundamental constitutional values of the State, such as, for example, the national language with regard to the Republic of Lithuania or fundamental values of the legal system or of the structure of the State with regard to the Republic of Austria, the Member State under consideration must be able to take the most appropriate decision itself with regard to the surname of a person and, in certain cases, correct the name accorded by another State.

80 The Commission observes that the name 'Fürstin von Sayn-Wittgenstein' was lawfully acquired in Germany, even if it was acquired by mistake. In addition, that name has already been recognised by the Austrian authorities, even if that too was the result of an error. That said, in the context of Austrian constitutional history it is necessary to take into account the Law on the abolition of the nobility as an element of national identity. In order to assess whether the objectives pursued by that Law can justify restriction on the freedom of movement of persons in a case such as that which is the subject of the main proceedings, a balance must be struck between, first, the constitutional interest in removing the noble elements of the name of the applicant

in the main proceedings and, second, the interest in preserving that name which was entered in the Austrian register of civil status for 15 years.

Answer of the Court

81 In accordance with settled case-law, an obstacle to the freedom of movement of persons can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions (See Case C-406/04 *De Cuyper* [2006] ECR I-6947, paragraph 40; Case C-76/05 *Schwarz and Gootjes-Schwarz* [2007] ECR I-6849, paragraph 94; *Grunkin and Paul*, paragraph 29; and *Rüffler*, paragraph 74).

82 According to the referring court and the governments which submitted observations to the Court, an objective consideration could be invoked as a justification in the main proceedings in conjunction with the Law on the abolition of the nobility, which has constitutional status and implements the principle of equal treatment in this field, and with the case-law of the Verfassungsgerichtshof dating from 2003.

83 In that regard, it must be accepted that, in the context of Austrian constitutional history, the Law on the abolition of the nobility, as an element of national identity, may be taken into consideration when a balance is struck between legitimate interests and the right of free movement of persons recognised under European Union law.

84 The justification relied upon by the Austrian Government by reference to the Austrian constitutional situation is to be interpreted as reliance on public policy.

85 Objective considerations relating to public policy are capable of justifying, in a Member State, a refusal to recognise the surname of one of its nationals, as accorded in another Member State (see, to that effect, *Grunkin and Paul*, paragraph 38).

86 The Court has repeatedly noted that the concept of public policy as justification for a derogation from a fundamental freedom must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without any control by the European Union institutions (see Case C-36/02 *Omega* [2004] ECR I-9609, paragraph 30, and Case C-33/07 *Jipa* [2008] ECR I-5157, paragraph 23). Thus, public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society (see *Omega*, paragraph 30 and the case-law cited).

87 The fact remains, however, that the specific circumstances which may justify recourse to the concept of public policy may vary from one Member State to another and from one era to another. The competent national authorities must therefore be allowed a margin of discretion within the limits imposed by the Treaty (see *Omega*, paragraph 31 and the case-law cited).

88 In the context of the main proceedings, the Austrian Government has stated that the Law on the abolition of the nobility constitutes implementation of the more general principle of equality before the law of all Austrian citizens.

89 The European Union legal system undeniably seeks to ensure the observance of the principle of equal treatment as a general principle of law. That principle is also enshrined in Article 20 of the Charter of Fundamental Rights. There can therefore be no doubt that the objective of observing the principle of equal treatment is compatible with European Union law.

90 Measures which restrict a fundamental freedom may be justified on public policy grounds only if they are necessary for the protection of the interests which they are intended to secure and only in so far as those objectives cannot be attained by less restrictive measures (see *Omega*, paragraph 36, and *Jipa*, paragraph 29).

91 The Court has already explained in that regard that it is not indispensable for the restrictive measure issued by the authorities of a Member State to correspond to a conception shared by all Member States as regards the precise way in which the fundamental right or legitimate interest in question is to be protected and that, on the contrary, the need for, and proportionality of, the provisions adopted are not excluded merely because one Member State has chosen a system of protection different from that adopted by another State (see *Omega*, paragraphs 37 and 38).

92 It must also be noted that, in accordance with Article 4(2) TEU, the European Union is to respect the national identities of its Member States, which include the status of the State as a Republic.

93 In the present case, it does not appear disproportionate for a Member State to seek to attain the objective of protecting the principle of equal treatment by prohibiting any acquisition, possession or use, by its nationals, of titles of nobility or noble elements which may create the impression that the bearer of the name is holder of such a rank. By refusing to recognise the noble elements of a name such as that of the applicant in the main proceedings, the Austrian authorities responsible for civil status matters do not appear to have gone further than is necessary in order to ensure the attainment of the fundamental constitutional objective pursued by them.

94 In those circumstances, the refusal, by the authorities of a Member State, to recognise all the elements of the surname of a national of that State, as determined in another Member State — in which that national resides — at the time of his or her adoption as an adult by a national of that other Member State, where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law cannot be regarded as a measure unjustifiably undermining the freedom to move and reside enjoyed by citizens of the Union.

95 The answer to the question referred is that Article 21 TFEU must be interpreted as not precluding the authorities of a Member State, in circumstances such as those in the main proceedings, from refusing to recognise all the elements of the surname of a national of that State, as determined in another Member State — in which that national resides — at the time of his or her adoption as an adult by a national of that other Member State, where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law, provided that the measures adopted by those authorities in that context are justified on public policy grounds, that is to say, they are necessary for the protection of the interests which they are intended to secure and are proportionate to the legitimate aim pursued.

Costs

96 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 21 TFEU must be interpreted as not precluding the authorities of a Member State, in circumstances such as those in the main proceedings, from refusing to recognise all the elements of the surname of a national of that State, as determined in another Member State — in which that national resides — at the time of his or her adoption as an adult by a national of that other Member State, where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law, provided that the measures adopted by those authorities in that context are justified on public policy grounds, that is to say, they are necessary for the protection of the interests which they are intended to secure and are proportionate to the legitimate aim pursued.

[Signatures]