JUDGMENT OF THE COURT (Second Chamber)

12 May 2011 *

In Case C-391/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Vilniaus miesto 1 apylinkės teismas (Lithuania), made by decision of 8 September 2009, received at the Court on 2 October 2009, in the proceedings

Malgožata Runevič-Vardyn,

Łukasz Paweł Wardyn

v

Vilniaus miesto savivaldybės administracija,

Lietuvos Respublikos teisingumo ministerija,

Valstybinė lietuvių kalbos komisija,

* Language of the case: Lithuanian.

Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyrius,

THE COURT (Second Chamber),

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

Advocate General: N. Jääskinen,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 15 September 2010,

after considering the observations submitted on behalf of:

— Ms Runevič-Vardyn and Mr Wardyn, by E. Juchnevičius and Ł. Wardyn, advokatai,

— the Lithuanian Government, by D. Kriaučiūnas and V. Balčiūnaitė, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the Estonian Government, by L. Uibo and M. Linntam, acting as Agents,

— the Latvian Government, by K. Drēviņa and Z. Rasnača, acting as Agents,

— the Polish Government, by M. Szpunar and M. Jarosz, acting as Agents,

— the Portuguese Government, by L. Fernandes and P.M. Pinto, acting as Agents,

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

— the European Commission, by D. Maidani, A. Steiblytė and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 18 TFEU and 21 TFEU, and of Article 2(2)(b) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

2 The reference has been made in proceedings between, on the one hand, a Lithuanian national, Malgožata Runevič-Vardyn, and her husband, the Polish national Łukasz Paweł Wardyn, and, on the other, the Vilniaus miesto savivaldybės administracija ('Municipal Administration of the City of Vilnius'), the Lietuvos Respublikos teisingumo ministerija ('Ministry of Justice of the Republic of Lithuania'), the Valstybinė lietuvių kalbos komisija ('State Commission on the Lithuanian Language') and the Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyrius (Civil Registry Division of the Legal Affairs Department of the Municipal Administration of the City of Vilnius; 'the Vilnius Civil Registry Division') concerning the latter's refusal to amend the surnames and forenames of the applicants in the main proceedings as they appear on the certificates of civil status which it issued to them.

Legal context

European Union legislation

3 Recitals 12 and 16 in the preamble to Directive 2000/43 read as follows:

'(12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such

as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.

…

(16) It is important to protect all natural persons against discrimination on grounds of racial or ethnic origin. …'

4 Article 1 of Directive 2000/43 provides that '[t]he purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment'.

5 Article 2(1) and (2)(b) of that directive provides:

'1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

…

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'

6 Article 3(1) of that directive defines its scope as follows:

‘Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;

(e) social protection, including social security and healthcare;

(f) social advantages;

(g) education;

(h) access to and supply of goods and services which are available to the public, including housing.'

National legislation

The Constitution

7 Article 14 of the Lithuanian Constitution provides that the State language is Lithuanian.

The Civil Code

8 Article 2.20(1) of the Lithuanian Civil Code ('the Civil Code') states that 'every person shall enjoy the right to a name. This right to a name includes the right to a surname, to one or more forenames and to a pseudonym.'

9 Article 3.31 of the Civil Code provides:

'Each spouse shall have the right to retain the surname which he or she had prior to marrying, to choose the surname of the other spouse as their joint surname or to have a double-barrelled surname formed by adding the spouse's surname to his or her own surname.'

10 Article 3.281 of the Civil Code provides that certificates of civil status are to be registered, renewed, modified, supplemented or corrected in accordance with the civil registration rules issued by the Minister for Justice.

11 Article 3.282 of the Civil Code provides that 'entries on certificates of civil status must be made in Lithuanian. Forenames, surnames and place names must be written in accordance with the rules of the Lithuanian language.'

The civil registration rules

12 Paragraph 11 of Decree No IR-294 of the Minister for Justice of 22 July 2008 confirming the civil registration rules (Žin., 2008, No 88-3541) provides that entries must be made on certificates of civil status in Lithuanian.

The rules relating to identity cards and passports

13 Law No IX-577 of 6 November 2001 concerning identity cards (Žin., 2001, No 97-3417), as amended (Žin., 2008, No 76-3007), and Law No IX-590 of 8 November 2001 concerning passports (Žin., 2001, No 99-3524), as amended (Žin., 2008, No 87-3466) provide that information set out on identity cards and in passports must be entered in Lithuanian characters.

14 Paragraphs 1 to 3 of Decree No I-1031 of the Lithuanian Supreme Council of 31 January 1991 concerning the writing of surnames and forenames in passports of citizens of the Republic of Lithuania (Žin., 1991, No 5-132) provide as follows:

'1. Surnames and forenames must be written in a Lithuanian citizen's passport in Lithuanian characters, in accordance with the entries in Lithuanian made in the existing passport or any other identity document of the person concerned on the basis of which a passport is being issued.

2. Surnames and forenames of persons who are not of Lithuanian origin must be written in a Lithuanian citizen's passport in Lithuanian characters. At the written request of the person concerned and in accordance with established procedure, the person's forename and surname shall be written:

(a) either phonetically, without applying the grammatical rules (that is to say, without adding any Lithuanian endings);

(b) or phonetically and in application of the grammatical rules (that is to say, adding Lithuanian endings).

3. The forename and surname of any person who has held the nationality of another State may be entered in accordance with the entries made in the citizen's passport issued by that other State or in any other equivalent document.'

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

15 Ms Runevič-Vardyn, the first applicant in the main proceedings, was born in Vilnius on 20 March 1977 and is a Lithuanian national. According to the information supplied to the Court, she belongs to the Polish minority in the Republic of Lithuania but does not have Polish nationality.

16 She states that her parents gave her the Polish forename 'Małgorzata' and her father's surname 'Runiewicz'.

17 According to the decision making the reference, the birth certificate issued to the first applicant in the main proceedings on 14 June 1977 states that her forename and surname were registered in their Lithuanian form 'Malgožata Runevič'. The same forename and surname appear on a new birth certificate issued to the first applicant in the main proceedings by the Vilnius Civil Registry Division on 9 September 2003 and on the Lithuanian passport which was issued to her by the competent authorities on 7 August 2002.

18 According to the observations of the applicants in the main proceedings, the birth certificate of 14 June 1977 was drawn up in Cyrillic characters, whereas that dated 9 September 2003 used the Roman alphabet, with the forename and surname of the first applicant in the main proceedings appearing on it in the form 'Malgožata Runevič'.

19 The first applicant in the main proceedings also states that a Polish birth certificate was issued to her on 31 July 2006 by the Civil Registry Office of the City of Warsaw. On that Polish certificate her forename and surname are entered in accordance with the rules governing the spelling of the Polish language, namely as 'Małgorzata Runiewicz'. The applicants in the main proceedings state that the competent Polish authorities also issued a marriage certificate on which their surnames and forenames are entered in accordance with the Polish spelling rules.

20 After living and working in Poland for some time, the first applicant in the main proceedings married the second applicant in the main proceedings on 7 July 2007. On the marriage certificate issued by the Vilnius Civil Registry Division, 'Łukasz Paweł Wardyn' is transcribed as 'Lukasz Pawel Wardyn' (using the characters of the Roman alphabet but not using diacritical modifications), whilst his wife's name appears in the form 'Malgožata Runevič-Vardyn' — indicating that only Lithuanian characters, which do not include the letter 'W', were used, including for the addition of her husband's surname to her own surname.

21 According to the file submitted to the Court, the applicants in the main proceedings are currently living with their son in Belgium.

22 On 16 August 2007, the first applicant in the main proceedings submitted a request to the Vilnius Civil Registry Division for her forename and surname, as they appear on her birth certificate, namely 'Malgožata Runevič', to be changed to 'Małgorzata Runiewicz'

and for her forename and surname, as they appear on her marriage certificate, namely 'Malgožata Runevič-Vardyn', to be changed to 'Małgorzata Runiewicz-Wardyn'.

23 In its reply of 19 September 2007, the Vilnius Civil Registry Division informed the first applicant in the main proceedings that it was not possible, under the applicable national rules, to change the entries on the certificates of civil status in question.

24 The applicants in the main proceedings brought an action before the national court.

25 In its decision, the national court sets out the various arguments put forward by the applicants in the main proceedings in support of that action. With regard to the second applicant, it states that, in its view, the refusal of the Lithuanian authorities to transcribe his forenames on the marriage certificate in a form which complies with the rules governing Polish spelling constitutes discrimination against a citizen of the European Union who has entered into a marriage in a State other than his State of origin. Had the marriage taken place in Poland, his forenames would have been recorded on the marriage certificate using the same spelling as that used on his birth certificate. Since, officially, the letter 'W' does not exist in the Lithuanian alphabet, the second applicant in the main proceedings questions why the original spelling of his surname was retained by the Lithuanian authorities whilst that of his forenames was changed.

26 The national court also notes that the Vilnius Civil Registry Division and the other interested parties opposed the request by the applicants in the main proceedings that those authorities should be required to change the entries on the certificates of civil status.

27 According to the decision making the reference, the Constitutional Court delivered a decision on 21 October 1999 on the constitutionality of the decision of 31 January 1991 of the Supreme Council concerning the spelling of first names and surnames in passports of Lithuanian citizens. That court declared that a person's forename and surname had to be entered on a passport in accordance with the rules governing the spelling of the official national language in order not to undermine the constitutional status of that language.

28 As it took the view that it was not possible for it to provide a clear answer to the questions raised in the dispute before it in the light, in particular, of Articles 18 TFEU and 21 TFEU, and of Article 2(2)(b) of Directive 2000/43, the Vilniaus miesto 1 apylinkės teismas (First District Court of the City of Vilnius) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In the light of the provisions of … Directive 2000/43/EC …, is Article 2(2)(b) of that directive to be construed as prohibiting Member States from indirectly discriminating against individuals on grounds of their ethnic origin in a case where national legal rules provide that their forenames and surnames may be written on certificates of civil status using only the characters of the national language?

(2) In the light of the provisions of … Directive 2000/43 …, is Article 2(2)(b) of that directive to be construed as prohibiting Member States from indirectly discriminating against individuals on grounds of their ethnic origin in a case where national legal rules provide that the forenames and surnames of individuals of different origin or nationality must be written on civil status documents using Roman characters and not employing diacritical marks, ligatures or other modifications to the characters of the Roman alphabet which are used in other languages?

(3) In the light of Article [21(1) TFEU], which provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, and in the light of the first paragraph of Article [18 TFEU], which prohibits discrimination on grounds of nationality, should those provisions be construed as prohibiting Member States from providing in national legal rules that forenames and surnames may be written on certificates of civil status using only the characters of the national language?

(4) In the light of Article [21(1) TFEU], which provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, and in the light of the first paragraph of Article [18 TFEU], which prohibits discrimination on grounds of nationality, should those provisions be construed as prohibiting Member States from providing in national legal rules that the forenames and surnames of individuals of different origin or nationality must be written on certificates of civil status using Roman characters and not employing diacritical marks, ligatures or other modifications to the characters of the Roman alphabet which are used in other languages?'

Admissibility of the second and fourth questions referred

29 It should be noted first of all that the Lithuanian Government is proposing that the Court should reject the second and fourth questions referred on the ground that they are inadmissible. According to that Government, the case before the national court concerns an action involving two requests from the first applicant in the main proceedings with regard to her birth certificate and marriage certificate, and not an action by the second applicant in the main proceedings concerning his marriage certificate. In those circumstances, the questions as to how the forenames of the second applicant in the main proceedings are entered are not connected to a specific problem which the national court has been called on to resolve. The Court, it is submitted, should therefore refrain from ruling on those questions, since the interpretation of

European Union law being sought bears no relation to the actual facts of the case or to the subject-matter of the main action.

30 It must be recalled in this regard that, within the framework of the cooperation between the Court and national courts and tribunals established by Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-45/09 *Rosenbladt* [2010] ECR I-9391, paragraph 32).

31 Moreover, according to the case-law of the Court, Article 267 TFEU establishes a non-contentious procedure which is in the nature of a step in the action pending before the national court and the parties to the main proceedings are merely invited to state their case within the legal limits laid down by the national court. In that context, the Court noted that, by the expression 'parties', the first paragraph of Article 23 of the Statute of the Court of Justice refers to the parties to the action before the national court (see, inter alia, Case 62/72 *Bollmann* [1973] ECR 269, paragraph 4, and the order in Case C-73/07 *Satakunnan Markkinapörssi and Satamedia* [2007] ECR I-7075, paragraph 11).

32 It follows from the information provided by the national court that the action before it was brought by both the applicants in the main proceedings and not just by the first applicant, and that it was those applicants who suggested to the national court the possibility of referring questions to the Court of Justice. Those questions concerned both the refusal to change the surname and the forename of the first applicant in the main proceedings and the change in the form in which the forenames of the second applicant in the main proceedings are entered on the civil status documents issued to them by the competent Lithuanian authorities. The questions referred for a preliminary ruling by that court in the exercise of the exclusive jurisdiction conferred on it

by Article 267 TFEU and the reasoning set out in its decision of reference relate to the situation of both applicants in the main proceedings.

33 With regard to the task conferred on the Court by Article 267 TFEU, it is true that the Court has held that it cannot give a ruling on a question referred by a national court where it is quite obvious that the interpretation or the assessment of the validity of a provision of European Union law sought by the national court bear no relation to the actual nature of the case or to the subject-matter of the main action (see, inter alia, Case C-143/94 *Furlanis* [1995] ECR I-3633, paragraph 12).

34 However, in the light of the information contained in the decision of reference, in particular that set out in paragraph 26 of the present judgment, and of the definition by the national court of the subject-matter and scope of the case before it, it does not appear that the interpretation of the provisions of European Union law which it seeks manifestly bears no relation to the actual nature or the subject-matter of that action.

35 The second and fourth questions referred must therefore be held to be admissible.

The questions referred for a preliminary ruling

The first and second questions

36 By its first and second questions, which it is appropriate to examine together, the national court asks, in essence, whether Article 2(2)(b) of Directive 2000/43 precludes

the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to change the form in which a person's surname and forename are entered, with the result that those names must be entered using only the characters of the national language, without diacritical marks, ligatures or other modifications to the characters of the Roman alphabet which are used in other languages.

37 The Lithuanian, Czech, Estonian, Polish and Slovak Governments and the European Commission contend that the national rules concerning the drafting of certificates of civil status do not come within the scope of Directive 2000/43, as described in Article 3(1) thereof. The first applicant in the main proceedings, they submit, has not provided any evidence to show that she has suffered specific inconvenience by reason of belonging to a racial or ethnic group in an area coming within the substantive scope of Directive 2000/43.

38 The applicants in the main proceedings, by contrast, argue that the scope of Directive 2000/43 is very broad and encompasses a large number of areas of social life. Thus, it is necessary to produce an identity document and various other types of documents, certificates or qualifications in order to enjoy certain of the rights provided for in that directive, to have the opportunity to use goods and services and to provide to the public the goods and services covered by Article 3(1) of that directive.

39 It should be noted, at the outset, that Article 1 of Directive 2000/43 provides that the purpose of that directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

40 Recital 16 in the preamble to that directive states that it is important to protect all natural persons against discrimination on grounds of racial or ethnic origin.

41 As regards the substantive scope of Directive 2000/43, recital 12 in its preamble states that, in order to ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as those listed in Article 3(1) of that directive.

42 Article 3(1) of the directive provides that, within the limits of the powers conferred upon the Community (now the European Union), that directive applies to all persons, as regards both the public and private sectors, including public bodies, in relation to the areas listed exhaustively in that provision and reproduced in paragraph 6 above.

43 It should be noted in those circumstances that, in the light of the objective of Directive 2000/43 and the nature of the rights which it seeks to safeguard, and in view of the fact that that directive is merely an expression, within the area under consideration, of the principle of equality, which is one of the general principles of European Union law, as recognised in Article 21 of the Charter of Fundamental Rights of the European Union, the scope of that directive cannot be defined restrictively.

44 It does not follow, however, that national rules governing the manner in which surnames and forenames are to be entered on certificates of civil status must be held to come within the scope of Directive 2000/43.

45 Although Article 3(1)(h) of Directive 2000/43 makes general reference to access to and supply of goods and services which are available to the public, it cannot be held, as the Advocate-General stated in point 58 of his Opinion, that such national rules come within the concept of a 'service' within the meaning of that provision.

46 It should also be borne in mind that the preparatory work relating to Directive 2000/43, which was adopted by the Council of the European Union, acting unanimously in accordance with Article 13 EC, indicates that the Council was unwilling to take into account an amendment proposed by the European Parliament whereby 'the exercise by any public body, including police, immigration, criminal and civil justice authorities, of its functions' would be included in the list of activities listed in Article 3(1) of that directive and thus come within its scope.

47 Consequently, although, as is apparent from paragraph 43 above, the scope of Directive 2000/43, as defined in Article 3(1) thereof, must not be interpreted restrictively, it does not cover national rules such as those at issue in the main proceedings which relate to the manner in which surnames and forenames are entered on certificates of civil status.

48 In those circumstances, it must be held that national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language relate to a situation which does not come within the scope of Directive 2000/43.

The third and fourth questions

49 By these questions, which it is appropriate to examine together, the national court asks, in essence, whether Articles 18 TFEU and 21 TFEU preclude the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to change the form in which a person's surname and forename are entered, with the result that those names must be entered using only the characters of the national language, without diacritical marks, ligatures or any other modifications to the characters of the Roman alphabet which are used in other languages.

50 Three separate aspects of the case before the national court are covered by those questions:

— the request by the first applicant in the main proceedings for her maiden name and her forename to be entered on her birth certificate and marriage certificate in a form which complies with the rules governing Polish spelling, which involves the use of the diacritical marks used in that language;

— the requests of the applicants in the main proceedings that the surname of the second applicant in the main proceedings, joined to the maiden name of the first applicant in the main proceedings and appearing on the marriage certificate, should be entered in a form which complies with the rules governing Polish spelling; and

— the request of the second applicant in the main proceedings for his forenames to be entered on that certificate in a form which complies with the rules governing Polish spelling.

Preliminary observations on the provisions of European Union law which are applicable

51 First of all, it is appropriate to examine whether, contrary to what the Lithuanian and Czech Governments, among others, maintain, the situation of the first applicant in the main proceedings comes, in regard to the civil status documents issued by the competent Lithuanian authorities and constituting the subject-matter of the main proceedings, within the scope of European Union law and, in particular, of the Treaty provisions on citizenship of the Union.

52 With regard to the birth certificate, the Lithuanian Government states inter alia that this is a civil status certificate issued for the first time on 14 June 1977, and thus well before the accession of the Republic of Lithuania to the European Union. Moreover, it is a certificate issued to a Lithuanian national by the competent authorities of that Member State. The situation of the first applicant in the main proceedings with regard to her birth certificate is therefore a purely internal situation. For that reason, the request made by the first applicant in the main proceedings to have that certificate altered does not, either *ratione temporis* or *ratione materiae*, come within the scope of European Union law, and in particular of the provisions relating to citizenship of the Union.

53 With regard to the application *ratione temporis* of those provisions to the present case, it should be noted that the main proceedings do not concern the recognition of rights derived from European Union law and allegedly acquired prior to the accession of the Republic of Lithuania and the entry into force of the provisions on citizenship of the Union for that Member State. This case concerns an allegation of current discriminatory treatment or a current restriction in respect of a citizen of the Union (see, to that effect, Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 24).

54 The first applicant in the main proceedings is not asking that her birth certificate be changed with retroactive effect but rather that, in order to facilitate her freedom of movement as a citizen of the Union — in view of the fact that, following her marriage

to a Polish national, she took up residence in Belgium, where she gave birth to her son, who has dual Lithuanian and Polish nationality — the competent Lithuanian authorities issue her with a birth certificate on which her maiden name and forename are entered in a form which complies with the rules governing Polish spelling.

55 The Court has already held that the provisions on citizenship of the Union are applicable as soon as they enter into force. They must for that reason be applied to the present effects of situations arising previously (*D'Hoop*, paragraph 25).

56 It follows that the discrimination or restriction alleged by the first applicant in the main proceedings in connection with the refusal to amend the form in which her maiden name and forename are entered on her birth certificate may, in principle, be determined in the light of the provisions of Articles 18 TFEU and 21 TFEU.

57 The question of the application *ratione temporis* of the provisions relating to citizenship of the Union does not arise in connection with the request for a change to be made to the marriage certificate of the applicants in the main proceedings issued on 7 July 2007.

58 With regard to the question whether the request for a change to be made to the birth certificate and marriage certificate of the first applicant in the main proceedings corresponds to a purely internal situation which does not come within the scope of European Union law in that these are certificates of civil status issued to her by the competent authorities of her Member State of origin, it must be pointed out that, as can be seen from paragraph 54 above, the first applicant in the main proceedings, who has exercised the right of freedom of movement and residence conferred on her directly by Article 21 TFEU, is seeking to have those certificates changed in order to facilitate her exercise of that right. She bases her request on, inter alia, Article 21 TFEU, pointing to the inconvenience caused by the fact that, when exercising

the rights conferred by those provisions, she is obliged to use civil status documents on which her surname and forename do not appear in their Polish form and for that reason do not reflect the nature of her relationship with the second applicant in the main proceedings or even with her son.

59 It must be recalled in this regard that Article 20 TFEU confers the status of citizen of the Union on every person holding the nationality of a Member State (see, inter alia, *D'Hoop*, paragraph 27, and Case C-34/09 *Ruiz Zambrano* [2011] I-1177, paragraph 40). The first applicant in the main proceedings, who holds the nationality of a Member State of the European Union, enjoys that status.

60 Recognising the importance attached by primary law to the status of citizen of the Union, the Court has stated on several occasions that that status is intended to be the fundamental status of nationals of the Member States (see Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 82; Case C-135/08 *Rottmann* [2010] ECR I-1449, paragraphs 43 and 56; and *Ruiz Zambrano*, paragraph 41).

61 That status enables those among such nationals who find themselves in the same situation to enjoy, within the scope *ratione materiae* of the Treaty, the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for (see, inter alia, Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31).

62 The situations falling within the scope *ratione materiae* of European Union law include those which involve the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 21 TFEU (see *Grzelczyk*, paragraph 33, and *D'Hoop*, paragraph 29).

63 Although, as European Union law stands at present, the rules governing the way in which a person's surname and forename are entered on certificates of civil status 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, and in particular with the Treaty provisions on the freedom of every citizen of the Union to move and reside in the territory of the Member States (see, to that effect, Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraphs 25 and 26; Case C-353/06 *Grunkin and Paul* [2008] ECR I-7639, paragraph 16; and Case C-208/09 *Sayn-Wittgenstein* [2010] ECR I-13693, paragraphs 38 and 39).

64 It is common ground in the main proceedings that both of the applicants in the main proceedings, as citizens of the Union, have exercised their freedom to move and reside in Member States other than their Member States of origin.

65 Since Article 21 TFEU contains not only the right to move and reside freely in the territory of the Member States but also, as may be seen from paragraphs 61 and 62 of the present judgment and as the Commission has submitted in its observations, a prohibition of any discrimination on grounds of nationality, it is necessary to examine, in the light of that provision, the refusal by the authorities of a Member State to amend certificates of civil status in circumstances such as those at issue in the main proceedings.

The existence of a restriction on freedom of movement

66 It must be noted, as a preliminary point, that a person's forename and surname are 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, signed in Rome on 4 November 1950. Even though Article 8 of that convention does not refer to it expressly, a person's forename and surname, as a means of personal identification and a link to a family, none the less concern his private and family life (see, inter alia, *Sayn-Wittgenstein*, paragraph 52 and the case-law cited).

67 In so far as a citizen of the Union must be granted in all Member States the same treatment in law as that accorded to the nationals of those Member States who find themselves in the same situation, it would be incompatible with the right of freedom of movement if a citizen, in the Member State of which he is a national, were to receive treatment that is less favourable than that which he would enjoy if he had not availed himself of the opportunities offered by the Treaty in relation to free movement (*D'Hoop*, paragraph 30).

68 The Court has already held that 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, and *Sayn-Wittgentstein*, paragraph 53).

69 With regard, first, to the request of the first applicant in the main proceedings for her forename and maiden name to be changed on the birth certificate and marriage certificate issued by the Vilnius Civil Registry Division, it must be held that, when a citizen of the Union moves to another Member State and subsequently marries a national of that other State, the fact that the surname which that citizen had prior to marriage, and her forename, cannot be changed and entered in documents relating to civil status issued by her Member State of origin except using the characters of the language of that latter Member State cannot constitute treatment that is less favourable than that which she enjoyed before she availed herself of the opportunities offered by the Treaty in relation to free movement of persons.

70 Hence, the absence of such a right is not liable to deter a citizen of the Union from exercising the rights of movement recognised in Article 21 TFEU and, to that extent, does not constitute a restriction. In all of the documents which were issued to the first applicant in the main proceedings by the competent Lithuanian authorities and which are the subject of the action in the main proceedings, the forename and maiden name registered at birth are entered in a uniform way, with the result that there is no restriction on the exercise of those rights.

71 It follows that Article 21 TFEU does not preclude the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to amend the surname which one of its nationals had prior to marriage and the forename of that person, where those names were registered at birth in accordance with those rules.

72 With regard, secondly, to the requests of the applicants in the main proceedings for a change in respect of the addition, on the marriage certificate, of the husband's surname to the maiden name of the first applicant in the main proceedings, it should be noted that that addition was made at the express request of the applicants in the main proceedings in accordance with the Lithuanian rules then in force.

73 Many daily actions, both in the public and in the private domains, require a person to provide evidence of his or her own identity and also, in the case of a family, evidence of the nature of the links between different family members. A couple who are both citizens of the Union, such as the couple in the main proceedings, residing and working in a Member State other than their Member States of origin, must, in accordance with the provisions of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/

EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77; corrigenda in OJ 2004 L 229, p. 35, OJ 2005 L 197, p. 34, and OJ 2007 L 204, p. 28), be in a position to prove the relationship which exists between them.

74 It is true that the differences in the spelling of the forename and maiden name of the first applicant in the main proceedings in the certificates of civil status issued by the Lithuanian authorities and those issued by the Polish authorities stem from a deliberate choice on her part and do not, as such, constitute a restriction on her right to move and reside freely. However, it cannot be excluded that the fact that, on the marriage certificate, her husband's surname is added to her maiden name in a form which does not correspond to the husband's surname as registered in his Member State of origin or, moreover, as it is entered, for the second applicant in the main proceedings, on the same marriage certificate, might be liable to cause inconvenience for those concerned.

75 Such inconvenience might arise from the discrepancy in the forms in which the same surname is entered for two persons constituting the same married couple (see, to that effect, *Garcia Avello*, paragraph 36, and *Sayn-Wittgenstein*, paragraphs 55 and 66).

76 However, according to the Court's case-law, in order to constitute a restriction on the freedoms recognised by Article 21 TFEU, the refusal to amend the joint surname of the applicants in the main proceedings under the national rules at issue must be liable to cause 'serious inconvenience' to those concerned at administrative, professional and private levels (see, to that effect, *Garcia Avello*, paragraph 36; *Grunkin and Paul*, paragraphs 23 to 28; and *Sayn-Wittgenstein*, paragraphs 67, 69 and 70).

77 It is therefore for the national court to decide whether there is a real risk, for a family such as that of the applicants in the main proceedings, because of the refusal on the part of the competent authorities to change the letter 'V' into a 'W' in the spelling of the surname of one of the members of that family, that family members will be obliged to dispel doubts as to their identity and the authenticity of the documents which they submit. If, in the circumstances of the case in the main proceedings, that refusal involves the possibility that the truthfulness of the information contained in those documents will be called into question and the identity of that family and the relationship which exists between its members placed in doubt, that might have significant consequences as regards, among other things, the exercise of the right of residence conferred directly by Article 21 TFEU (see, also to that effect, *Garcia Avello*, paragraph 36, and *Sayn-Wittgenstein*, paragraphs 55 and 66 to 70).

78 It is consequently for the national court to decide whether the refusal of the competent authorities of a Member State to amend, pursuant to national rules, the marriage certificate of a couple who are citizens of the Union in order that the joint surname of the husband and wife is entered both uniformly and in a manner which complies with the spelling rules of the Member State of origin of the husband, whose surname is at issue, is liable to cause serious inconvenience to those concerned at administrative, professional and private levels. If that is the case, it is a restriction on the freedoms conferred by Article 21 TFEU on every citizen of the Union.

79 With regard, thirdly, to the request of the second applicant in the main proceedings for his forenames to be entered on the marriage certificate issued by the Vilnius Civil Registry Division in a form which complies with the rules governing Polish spelling, namely 'Łukasz Paweł', it should be noted that those forenames were entered on that marriage certificate as 'Lukasz Pawel'. The discrepancy between the forms in which the above names are entered lies in the omission of the diacritical marks, which are not used in the Lithuanian language.

80 In that regard, the second applicant in the main proceedings and the Polish Government maintain that any change by the authorities of a Member State in the original spelling of a person's forename or surname appearing on the certificates of civil status issued by the authorities of that person's Member State of origin may have detrimental consequences, whether the change consists in a new way of writing the forename and/or surname concerned or is merely the result of removal of the diacritical marks from those names. The pronunciation of the forename and/or surname may be affected by this, while the removal of a diacritical mark could in certain cases also create a different name.

81 However, as the Advocate-General stated in point 96 of his Opinion, diacritical marks are often omitted in many daily actions for technical reasons, for example because of the objective constraints inherent in some computer systems. Also, for people who are unfamiliar with a foreign language the significance of diacritical marks is often misunderstood and they will not even notice them. It is therefore unlikely that the omission of such marks could, in itself, cause actual and serious inconvenience for the person concerned, within the meaning of the case-law cited in paragraph 76 above, such as to give rise to doubts as to her identity and the authenticity of the documents submitted by her, or the truthfulness of their content.

82 It follows that the refusal of the competent authorities of a Member State, pursuant to the applicable national rules, to amend the marriage certificate of a citizen of the Union who is a national of another Member State in such a way that the forenames of that citizen are entered on that certificate with diacritical marks in the form in which they were entered on the certificates of civil status issued by his Member State of origin and in a form which complies with the rules governing the spelling of the official national language of that State does not, in a situation such as that at issue in the main proceedings, constitute a restriction on the freedoms conferred by Article 21 TFEU on every citizen of the Union.

The existence of justification for a restriction on freedom of movement and residence of citizens of the Union

83 In the event that the national court finds that the refusal to amend the joint surname of the applicants in the main proceedings constitutes a restriction of Article 21 TFEU, it should be noted that, according to settled case-law, a restriction on 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, inter alia, *Grunkin and Paul*, paragraph 29, and *Sayn-Wittgenstein*, paragraph 81).

84 According to several of the governments which have submitted observations to the Court, it is legitimate for a Member State to ensure that the official national language is protected in order to safeguard national unity and preserve social cohesion. The Lithuanian Government stresses, in particular, that the Lithuanian language constitutes a constitutional asset which preserves the nation's identity, contributes to the integration of citizens, and ensures the expression of national sovereignty, the indivisibility of the State, and the proper functioning of the services of the State and the local authorities.

85 In that regard, it should be noted that the provisions of European Union law do not preclude the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language (see Case C-379/87 *Groener* [1989] ECR 3967, paragraph 19).

86 According to the fourth subparagraph of Article 3(3) EU and Article 22 of the Charter of Fundamental Rights of the European Union, the Union must respect its rich cultural and linguistic diversity. Article 4(2) EU provides that the Union must also respect the national identity of its Member States, which includes protection of a State's official national language.

87 It follows that the objective pursued by national rules such as those at issue in the main proceedings, designed to protect the official national language by imposing the rules which govern the spelling of that language, constitutes, in principle, a legitimate objective capable of justifying restrictions on the rights of freedom of movement and residence provided for in Article 21 TFEU and may be taken into account when legitimate interests are weighed against the rights conferred by European Union law.

88 Measures which restrict a fundamental freedom, such as that provided for in Article 21 TFEU, may, however, be justified by objective considerations 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 *Sayn-Wittgenstein*, paragraph 90 and the case-law cited).

89 As stated in paragraph 66 above, a person's surname 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.

90 Furthermore, the importance of ensuring the protection of the family life of citizens of the Union in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the Treaty has been recognised under European Union law (see Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraph 98).

91 If it is established that the refusal to amend the joint surname of the couple in the main proceedings, who are citizens of the Union, causes serious inconvenience to them and/or their family, at administrative, professional and private levels, it will be for the national court to decide whether such refusal reflects a fair balance between the interests in issue, that is to say, on the one hand, the right of the applicants in the

main proceedings to respect for their private and family life and, on the other hand, the legitimate protection by the Member State concerned of its official national language and its traditions.

92 With regard to the alteration, on the marriage certificate, of the Polish surname 'Wardyn' to 'Vardyn', the disproportionate nature of the refusal by the Vilnius Civil Registry Division to accede to requests for change made by the applicants in the main proceedings in that regard may possibly appear from the fact that the Vilnius Civil Registry Division entered that name, in respect of the second applicant in the main proceedings, on the same certificate in compliance with the Polish spelling rules at issue.

93 It should also be noted that, according to the information supplied to the Court, the surnames of nationals of the other Member States may, in Lithuania, be written using characters of the Roman alphabet which do not exist in the Lithuanian alphabet. The fact that, on the marriage certificate, the surname of the second applicant in the main proceedings begins with the letter 'W', which does not exist in the Lithuanian alphabet, provides further evidence of this.

94 In the light of the foregoing, the answer to the third and fourth questions is that Article 21 TFEU must be interpreted as:

— not precluding the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to amend, on the birth certificate and marriage certificate of one of its nationals, the surname and forename of that person in accordance with the spelling rules of another Member State;

— not precluding the competent authorities of a Member State from refusing, in circumstances such as those at issue in the main proceedings and pursuant to those same rules, to amend the joint surname of a married couple who are citizens of the Union, as it appears on the certificates of civil status issued by the Member State of origin of one of those citizens, in a form which complies with the spelling rules of that latter State, on condition that that refusal does not give rise, for those Union citizens, to serious inconvenience at administrative, professional and private levels, this being a matter which it is for the national court to decide. If that proves to be the case, it is also for that court to determine whether the refusal to make the amendment is necessary for the protection of the interests which the national rules are designed to secure and is proportionate to the legitimate aim pursued;

— not precluding the competent authorities of a Member State from refusing, in circumstances such as those at issue in the main proceedings and pursuant to those same rules, to amend the marriage certificate of a citizen of the Union who is a national of another Member State in such a way that the forenames of that citizen are entered on that certificate with diacritical marks as they were entered on the certificates of civil status issued by his Member State of origin and in a form which complies with the rules governing the spelling of the official national language of that latter State.

Costs

95 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:

1. **National rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language relate to a situation which does not come within the scope of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;**

2. **Article 21 TFEU must be interpreted as:**

   — **not precluding the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to amend, on the birth certificate and marriage certificate of one of its nationals, the surname and forename of that person in accordance with the spelling rules of another Member State;**

   — **not precluding the competent authorities of a Member State from refusing, in circumstances such as those at issue in the main proceedings and pursuant to those same rules, to amend the joint surname of a married couple who are citizens of the Union, as it appears on the certificates of civil status issued by the Member State of origin of one of those citizens, in a form which complies with the spelling rules of that latter State, on condition that that refusal does not give rise, for those Union citizens, to serious inconvenience at administrative, professional and private levels, this being a matter which it is for the national court to decide. If that proves to be the case, it is also for that court to determine whether the**

refusal to make the amendment is necessary for the protection of the interests which the national rules are designed to secure and is proportionate to the legitimate aim pursued;

— **not precluding the competent authorities of a Member State from refusing, in circumstances such as those at issue in the main proceedings and pursuant to those same rules, to amend the marriage certificate of a citizen of the Union who is a national of another Member State in such a way that the forenames of that citizen are entered on that certificate with diacritical marks as they were entered on the certificates of civil status issued by his Member State of origin and in a form which complies with the rules governing the spelling of the official national language of that latter State.**

[Signatures]