Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 14 January 2016[1]

Case C-438/14

Nabiel Peter Bogendorff von Wolffersdorff
v
Standesamt der Stadt Karlsruhe,
Zentraler Juristischer Dienst der Stadt Karlsruhe

(Request for a preliminary ruling from the Amtsgericht Karlsruhe (Germany))

(Citizenship of the Union — Refusal by the authorities of a Member State to enter in the register of births titles of nobility and a nobiliary particle included in a surname which an adult person has obtained in another Member State — Situation in which the applicant, who is a national of the two Member States concerned, obtained the name at his own request)

I – Introduction

1. This request for a preliminary ruling concerns the interpretation of Articles 18 TFEU and 21 TFEU in the context of a dispute between Mr Nabiel Peter Bogendorff von Wolffersdorff, a German and British national, and the German authorities which refused to change the forenames and surname in his birth certificate and to add to the register of births the titles of nobility included in a name he obtained in the United Kingdom, namely 'Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff'.[2]

2. This case is part of the long list of cases concerning European citizenship relating to surnames, which have given rise to the judgments in *Konstantinidis* (C-168/91, EU:C:1993:115); *Garcia Avello* (C-148/02, EU:C:2003:539); *Grunkin and Paul* (C-353/06, EU:C:2008:559); *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806); and *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291).

3. In spite of similarities with the case which gave rise to the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), the present case differs from the latter in that the applicant in the main proceedings is a national of two Member States and because German law allows titles of nobility to be used as an element of a surname, even though they have been abolished and can no longer be conferred.

1 — Original language: French.

2 — In this Opinion I shall use the applicant's forenames and surname as used in the proceedings before the national court, namely 'Nabiel Peter Bogendorff von Wolffersdorff'.

II – Legal context

A – *European Union law*

4. The first paragraph of Article 18 TFEU is worded as follows:

‘Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.’

5. Article 20 TFEU provides:

‘1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

(a) the right to move and reside freely within the territory of the Member States;

...

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.’

6. Article 21(1) TFEU reads as follows:

‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.’

B – *German law*

7. Paragraph 123(1) of the Basic Law of the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland) of 23 May 1949 (BGBl. p. 1, ‘the Basic Law’) provides that ‘[l]aw from the period before the Bundestag first convenes shall continue in force in so far as it does not conflict with the Basic Law’.

8. Article 109 of the Constitution of the German Empire (Verfassung des Deutschen Reichs), adopted on 11 August 1919 at Weimar, and which entered into force on 14 August 1919 (*Reichsgesetzblatt* 1919, p. 1383, ‘the Weimar Constitution’), provides:

‘All Germans are equal before the law.

Men and women have in principle the same civic rights and duties.

Public law advantages or disadvantages of birth or rank are to be abolished. Titles of nobility are valid only as part of a name and may no longer be conferred.

Titles may be conferred only if they denote an office or profession; this does not affect academic degrees.

The State may not confer orders or decorations.

No German may accept a title or order from a foreign Government.'

9. The Law introducing the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch) of 21 September 1994 (BGBl. I p. 2494, corrigendum 1997 I, p. 1061, 'the EGBGB'), in the version applicable at the time of the facts in the main proceedings, provides:

'Paragraph 5 — Personal status

(1) Where reference is made to the law of the State of which a person is a national, and the person is a national of several States, the law to be applied is the law of the State with which the person is most closely linked, in particular by his habitual residence or by the course of his life. If the person is also German, that legal position takes precedence.

...

Paragraph 6 — Public policy

A rule of law of another State is not to be applied if its application leads to a result that is manifestly incompatible with essential principles of German law. In particular, it is not to be applied if application is incompatible with fundamental rights.

...

Paragraph 10 — Name

(1) A person's name is subject to the law of the State of which the person is a national.

...

Paragraph 48 — Choice of a name acquired in another Member State of the European Union

If a person's name is subject to German law, he may, by declaration to the register office, choose the name acquired during habitual residence in another Member State of the European Union and entered in a register of civil status there, where this is not manifestly incompatible with essential principles of German law. The choice of name takes effect retroactively from the date of entry in the register of civil status of the other Member State, unless the person expressly declares that the choice of name is to have effect only for the future. The declaration must be publicly attested or certified. …'

III – The dispute in the main proceedings and the question referred

10. The applicant in the main proceedings was born on 9 January 1963 in Karlsruhe, Germany, as Nabiel Bagadi. The birth is recorded in the register of births of the register office of Karlsruhe.

11. Nabiel Bagadi subsequently and by way of adoption acquired the German surname Bogendorff, which he later changed, together with his forename, with the result that his present German forename and surname are Nabiel Peter Bogendorff von Wolffersdorff.

12. In 2001 Mr Bogendorff von Wolffersdorff moved to the United Kingdom where, since 2002, he has pursued the profession of insolvency advisor in London.

13. In 2004 Mr Bogendorff von Wolffersdorff acquired British nationality by naturalisation.

14. By a deed poll of 26 July 2004, registered on 22 September 2004 at the Supreme Court of England and Wales, United Kingdom, Mr Bogendorff von Wolffersdorff changed his name to 'Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff'. The declaration was published in *The London Gazette* of 8 November 2004. [3]

15. In 2005, and on account of his wife's pregnancy, Mr Bogendorff von Wolffersdorff left London for Chemnitz in Germany, where his daughter was born on 28 February 2006.

16. The birth of his daughter, who has dual German and British nationality, was declared to the Consulate General of the United Kingdom in Düsseldorf on 23 March 2006. The girl's forenames and surname on her British birth certificate and passport are 'Larissa Xenia Gräfin von Wolffersdorff Freiin von Bogendorff'.

17. However, on the basis of Paragraph 10 of the EGBGB, the Chemnitz register office refused to register Mr Bogendorff von Wolffersdorff's daughter under her British name.

18. By order of 6 July 2011, the Oberlandesgericht Dresden (Higher Regional Court, Dresden, Germany) instructed the authorities of the city of Chemnitz to register Mr Bogendorff von Wolffersdorff's daughter under her British name, ruling:

'[t]he fact that, with the entry into force of the Weimar Constitution, titles of nobility are, strictly speaking, no longer titles, but must be used as elements of the surname (and have therefore become, on that basis, true surnames, see Henrich/Wagenitz, Deutsches Namensrecht, 2007, 015, paragraph 9, "Noble names") has no relevance to the use of the name of the person concerned, to whom only a surname must, at the outset, be accorded. Surname implies that the part of a name which, before the entry into force of the Weimar Constitution, would have been a title of nobility must be placed after the forename, not before it. No title of nobility can be conferred on the person concerned, this being the privilege of the prince under the monarchical Constitution, when raising a person to the nobility. Contrary to the view of the Landgericht, the Weimar Constitution contains no prohibition on titles of nobility in a surname, as, for example, is provided for in the Austrian law repealing the nobility of 1919, on which the Court gave a ruling on 22 December 2010 (StAZ 2011, page 77). Accordingly, in Germany, and also under the Republic, it is actually recognised that, in special circumstances, a surname which contains a title of nobility may be transmitted by a change of name governed by public law (Henrich/Wagenitz ibid.; see ... OVG Hamburg StAZ 2007, page 46; BVerwG DVBI. 1997, p. 616).' [4]

19. In accordance with those instructions, Mr Bogendorff von Wolffersdorff's daughter therefore uses, as a German citizen, forenames and a surname which are identical to those she uses as a British citizen, that is 'Larissa Xenia Gräfin von Wolffersdorff Freiin von Bogendorff'.

20. On 22 May 2013, Mr Bogendorff von Wolffersdorff declared in publicly certified form that he was instructing the Standesamt der Stadt Karlsruhe (the register office of the city of Karlsruhe), in accordance with Paragraph 48 of the EGBGB, to enter his forename and surname under English law in the register of births as his birth name, which the Standesamt refused to do.

21. In those circumstances, Mr Bogendorff von Wolffersdorff asked the Amtsgericht Karlsruhe (Local Court, Karlsruhe, Germany) to order the register office of the city of Karlsruhe, in accordance with Paragraph 49(1) of the Law on civil status (Personenstandsgesetz), to alter his birth certificate retroactively from 22 September 2004 by changing his forenames and surname to 'Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff'.

3 — See *The London Gazette* of 8 November 2004, p. 14113, available at the website: https://www.thegazette.co.uk/notice/L-57458-1018.

4 — 17 W 0465/11.

22. The register office of the city of Karlsruhe opposed that application based on the public policy reservation provided for in Paragraph 48 of the EGBGB.

23. In those circumstances, the Amtsgericht Karlsruhe (Local Court, Karlsruhe) decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Are Articles 18 TFEU and 21 TFEU to be interpreted as meaning that the authorities of a Member State are obliged to recognise the change of name of a national of that State if he is at the same time a national of another Member State and has acquired in that Member State, during habitual residence, by means of a change of name not associated with a change of family law status, a freely chosen name including several tokens of nobility, where it is possible that a future substantial link with that State does not exist and in the first Member State the nobility has been abolished by constitutional law but the titles of nobility used at the time of abolition may continue to be used as part of a name?'

IV – Procedure before the Court

24. The request for a preliminary ruling was lodged at the Court on 23 September 2014. Mr Bogendorff von Wolffersdorff, the Zentraler Juristischer Dienst der Stadt Karlsruhe (the central legal service of the city of Karlsruhe), the German Government and the European Commission lodged written observations and made their oral observations at the hearing of 12 November 2015.

V – Assessment

25. By its question, the referring court asks, essentially, whether Articles 18 TFEU and 21 TFEU preclude a refusal by the competent authorities of a Member State to recognise the change of name of a national of that Member State when that national is at the same time a national of another Member State and has acquired, in the latter Member State, during a period of long-term residence, a freely chosen name which contains several titles of nobility.

A – *The scope of the FEU Treaty*

26. It should be noted from the outset that, according to the settled case-law of the Court, 'although … 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 EU 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'. [5]

27. As citizenship of the Union, which is covered by Article 20 TFEU, cannot have the objective or effect of extending the scope of EU Law to purely internal situations, the application of Article 20 TFEU presupposes the existence of a link between the situation at issue and EU law. [6]

28. In this case, the central legal service of the city of Karlsruhe and the German Government consider that, since Mr Bogendorff von Wolffersdorff is of German nationality, pursuant to Paragraph 5(1) of the EGBGB only German law applies to his change of name.

5 — Judgment in *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, paragraph 63). See also judgments in *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 25); *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraph 16); and *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 38).

6 — See judgments in *Uecker and Jacquet* (C-64/96 and C-65/96, EU:C:1997:285, paragraph 23); *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 26); and *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraph 16).

29. The Court has already rejected that type of argument in the case which gave rise to the judgment in *Garcia Avello* (C-148/02, EU:C:2003:539) in relation to Belgian rules of private international law which, in a similar way to Paragraph 5(1) of the EGBGB, give precedence to Belgian nationality in cases of dual nationality. Rules such as those Belgian and German legislative provisions can preclude neither the existence of a link between the situation at issue and EU law nor application of the provisions of EU law concerning citizenship.

30. In paragraph 27 of the judgment in *Garcia Avello* (C-148/02, EU:C:2003:539), the Court held that 'such a link with [EU] law does … exist in regard to persons in a situation such as that of the children of Mr Garcia Avello, who are nationals of one Member State lawfully resident in the territory of another Member State'.

31. In paragraph 28 of that judgment, the Court added that 'that conclusion cannot be invalidated by the fact that the children involved in the main proceedings also have the nationality of the Member State in which they have been resident since their birth and which, according to the authorities of that State, is by virtue of that fact the only nationality recognised by the latter. It is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the [FEU] Treaty'.

32. It is therefore clear from that case-law that, contrary to the arguments of the central legal service of the city of Karlsruhe and the German Government, Mr Bogendorff von Wolffersdorff, who holds British nationality and is lawfully resident in Germany, may, in his relations with the Federal Republic of Germany, rely on a link with EU law and therefore the latter's applicability, a finding which cannot be precluded by his German nationality.

33. The cross-border nature of the case at issue is even more relevant if account is taken of the fact that Mr Bogendorff von Wolffersdorff had, according to English law and during a period of lawful residence in England, acquired the forenames and surname whose recognition he seeks to obtain in Germany by exercising the right to freedom of movement conferred on him by Articles 20 TFEU and 21 TFEU.

34. It is therefore necessary to examine in the light of the provisions of the FEU Treaty on citizenship, that is Articles 18 TFEU, 20 TFEU and 21 TFEU, the refusal by the German authorities to recognise, in their entirety, forenames and a surname obtained in the United Kingdom by a European citizen who has both British and German nationality.

B – *The existence of discrimination prohibited by Article 18 TFEU*

1. The arguments of the parties

35. The referring court raises the question whether the non-recognition of a change of name by a national who holds dual British and German nationality could be contrary to Article 18 TFEU, which prohibits all discrimination on grounds of nationality.

36. According to the Commission, the principle of non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way. Given that citizens of dual nationality encounter particular difficulties in relation to their surname and, therefore, differ from persons having the nationality of a single Member State, they are in a different situation.

37. Accordingly, the Commission considers that the refusal by the German authorities to recognise the name that Mr Bogendorff von Wolffersdorff obtained in the United Kingdom constitutes the same treatment of different situations, which is contrary to the principle of non-discrimination in Article 18 TFEU.

38. The German Government considers that the application of German law to a German national cannot constitute discrimination on grounds of his nationality.

39. The central legal service of the city of Karlsruhe does not expressly refer to Article 18 TFEU, but considers that the case-law of the court requiring recognition of a name acquired in another Member State is based on the principle of first registration. That principle would mean that the name which has priority is that which is lawfully registered first in a Member State. The rejection of a change of name accorded in a Member State of which the applicant has subsequently become a national is therefore consistent with that principle and, accordingly, does not constitute an infringement of EU law.

2. Assessment

40. It is settled case-law that 'the principle of non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way'. [7]

41. As I stated above, [8] the Court has already addressed that question in the case which gave rise to the judgment in *Garcia Avello* (C-148/02, EU:C:2003:539), in which Belgian private international law, in a similar way to German private international law, [9] determined the applicable law in the event of dual nationality by giving precedence to Belgian nationality. [10]

42. The Court examined whether the situations of persons having only Belgian nationality and the situations of persons who also have the nationality of another Member State 'are different, in which case the principle of non-discrimination would mean that [the latter] may assert their right to be treated in a manner different from that in which persons having only Belgian nationality are treated'. [11]

43. As Belgian nationals of dual nationality were subject to two different legal systems, which may cause them difficulties specific to their situation and result in their having different surnames, the Court held in paragraph 37 of that judgment that they could be 'distinguish[ed] … from persons holding only Belgian nationality, who are identified by one surname alone'. [12]

44. Therefore, and contrary to what is claimed by the central legal service of the city of Karlsruhe, a person's subsequent acquisition of British nationality or current residence in Germany has no influence on the fact that he is in a different situation.

45. In addition, I consider that the question whether a person of dual nationality is in a different situation from that of a person with only German nationality cannot depend on the manner in which the name accorded has been obtained. The difference in situation which should confer entitlement to a different treatment so as to avoid discrimination arises because a person of dual nationality is subject to two different schemes.

7 — Judgment in *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 31). See also, to that effect, judgments in *National Farmers' Union and Others* (C-354/95, EU:C:1997:379, paragraph 61); *SCAC* (C-56/94, EU:C:1995:209, paragraph 27); and *Codorniu* v *Council* (C-309/89, EU:C:1994:197, paragraph 26).

8 — See points 29 to 31 of this Opinion.

9 — See Paragraph 5(1) of the EGBGB.

10 — See judgment in *Garcia Avello* (C-148/02, EU:C:2003:539, paragraphs 6 to 8 and 32).

11 — Ibid. (paragraph 34).

12 — Ibid. (paragraph 37).

46. It follows from the foregoing that German nationals using different surnames because of the different laws with which they are linked by nationality may rely on difficulties specific to their situation, which distinguishes them from persons having only German nationality, regardless of the way in which the law of their second nationality has accorded them a name different from that recognised by German law. They are therefore in a different situation requiring treatment different from that accorded to people having only German nationality.

47. However, like the Commission, I consider that Mr Bogendorff von Wolffersdorff is being treated by the German authorities in the same way as persons having only German nationality, although his situation is different from theirs because of his dual nationality.

48. Accordingly, there is an infringement of the principle of non-discrimination established by Article 18 TFEU. I shall analyse below whether there is any justification for that infringement. [13]

C – *The existence of a restriction on Articles 20 TFEU and 21 TFEU*

1. Arguments of the parties

49. According to the Commission, the refusal to recognise a change of name in a situation such as that in this case constitutes a restriction on the right to move and reside freely within the territory of the Member States as enshrined in Articles 20 TFEU and 21 TFEU, since a difference in surnames in two Member States is likely to hamper the exercise of that right by creating serious inconvenience at professional and private levels.

50. The Commission considers that this is true not only in the case of non-recognition of a name accorded in the Member State of birth or residence, but also where a person who has dual nationality of the two Member States is adversely affected by it. Since the forenames and surname which Mr Bogendorff von Wolffersdorff uses in the United Kingdom ('Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff') and in Germany ('Nabiel Peter Bogendorff von Wolffersdorff') are not identical, that difference in names could lead to confusion and inconvenience resulting from his no longer being able to benefit from the legal effects of documents drawn up in one of the two Member States.

51. However, the referring court states that, in this case, the facts indicate neither any significant identification difficulties for Mr Bogendorff von Wolffersdorff nor any significant obstacles causing actual harm to him in his private and professional life. It is on the basis of that account of the facts that the German Government considers that the right to freedom of movement is not restricted in this case.

52. First, the use of his British name solely in professional contexts in the United Kingdom implies that that name does not actually have a great deal of importance for proving his identity and family membership in Germany. Secondly, that finding is confirmed by the fact that the applicant allowed more than six years to elapse between changing his name in the United Kingdom and his application to the register office in Germany.

13 — See points 71 to 105 of this Opinion.

53. The central legal service of the city of Karlsruhe focuses on the difference between the case in the main proceedings and the case giving rise to the judgment in *Grunkin and Paul* (C-353/06, EU:C:2008:559). In its view, that case-law imposes on Member States only the obligation to recognise a change of name which has been registered in the Member State of birth or residence. According to the principle of first registration,[14] the rejection of a change of name accorded in a Member State of which the applicant has subsequently become a national does not constitute a restriction on the freedom of movement guaranteed by Articles 20 TFEU and 21 TFEU.

2. Assessment

54. It must be borne in mind that, according to the settled case-law of the Court, 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 right of freedom of movement conferred by Article 21(1) TFEU.[15]

55. In accordance with the same case-law, '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 [is] 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'.[16]

56. If that principle applies to persons who, as was the case in the cases giving rise to the judgments in *Grunkin and Paul* (C-353/06, EU:C:2008:559) and *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), are nationals of a single Member State, it applies *a fortiori* to persons who, like Mr Bogendorff von Wolffersdorff, have the nationality of a number of Member States.

57. 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, signed in Rome on 4 November 1950.[17]

58. As the Court first held in the case giving rise to the judgment in *Garcia Avello* (C-148/02, EU:C:2003:539), 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'.[18]

14 — See point 39 of this Opinion

15 — See judgments in *De Cuyper* (C-406/04, EU:C:2006:491, paragraph 39); *Nerkowska* (C-499/06, EU:C:2008:300, paragraph 32); *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraph 21); *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, paragraphs 67 and 68); and *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 53).

16 — See judgments in *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraphs 21 and 22) and *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 54).

17 — See judgments in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 52) and *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, paragraph 66). For the case-law on the protection of a person's name by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, see European Court of Human Rights judgments *Burghartz v. Switzerland* of 22 February 1994, Series A No 280-B, § 24, and *Stjerna v. Finland* of 25 November 1994, Series A No 299-B, § 37.

18 — Judgment in *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 36). See also, to that effect, judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 55).

59. It follows from the case-law subsequent to the judgment in *Garcia Avello* (C-148/02, EU:C:2003:539) that 'numerous everyday dealings, in both the public and private spheres, require proof of identity' [19] and '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'. [20]

60. In the case giving rise to the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 64), the Court held that 'the fact [had to] 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'.

61. As a result, it was held in that case that the name 'Fürstin von Sayn-Wittgenstein' was a single surname composed of a number of elements and that 'the names "Fürstin von Sayn-Wittgenstein" and "Sayn-Wittgenstein" [were] not identical' [21].

62. In the same way, nor are the names 'Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff' and 'Nabiel Peter Bogendorff von Wolffersdorff' identical. On this view, any difference between two names which apply to a single person is in principle capable of giving rise to confusion and inconvenience.

63. It must, however, be recalled that the case-law requires that the national rules at issue be 'liable to cause "serious inconvenience" to those concerned at administrative, professional and private levels' [22] and in particular 'a real risk [for a person] … that [he] will be obliged to dispel doubts as to [his] identity and the authenticity of the documents which [he] submit[s]'. [23]

64. In my opinion, it is clear that that criterion is satisfied in this case for the same reasons as those given by the Court in paragraphs 66 to 70 of the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), all the more so because, unlike Mrs Sayn-Wittgenstein, Mr Bogendorff von Wolffersdorff has dual German and British nationality.

65. Therefore, if '"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', [24] the same is true for Mr Bogendorff von Wolffersdorff, who used his British name in both a private and a professional context during his residence in the United Kingdom.

66. Thus, having two passports with substantially different forenames and surnames, Mr Bogendorff von Wolffersdorff, 'risks having to dispel suspicion of false declaration caused by the divergence' between [25] his British and German forenames and surnames. As the Commission states, that risk exists regardless of whether there is a substantial link with the other Member State, in this case the United Kingdom, which could also continue to exist in the future.

19 — Judgments in *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraph 25) and *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 61). See also, to that effect, judgment in *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, paragraph 73).

20 — Judgments in *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraphs 26 and 28) and *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraphs 55 and 69).

21 — Judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 65).

22 — Judgment in *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, paragraph 76), referring to the judgments in *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 36); *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraphs 23 to 28), and *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraphs 67, 69 and 70).

23 — Judgment in *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, paragraph 77). See also, to that effect, judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 70).

24 — Judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 67).

25 — Judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 68).

67. At the hearing, Mr Bogendorff von Wolffersdorff gave several examples of the serious inconvenience he encounters in Germany because of the difference in the names contained in those German and British identification documents, in particular during roadside checks and when opening personal or business bank accounts. He also claimed that he has, on several occasions, been required to spend several hours in a police station while the German authorities verified the authenticity and validity of his British passport.

68. Moreover, I would add the risk of doubts (in particular when travelling abroad) concerning the family relationship between Mr Bogendorff von Wolffersdorff and his daughter, who is a minor, Larissa Xenia, resulting from the fact that each of them has a German passport with a substantially different surname.

69. With regard to the principle of first registration, put forward by the central legal service of the city of Karlsruhe in its written submissions as well as at the hearing, it should be noted that that principle is in no way substantiated in the case-law, and in particular in the judgment in *Grunkin and Paul* (C-353/06, EU:C:2008:559). Although, in accordance with that judgment, the German authorities were required to recognise the first and single surname that the child at issue had acquired in Denmark, that was a finding which arose from the facts of that case rather than being a principle of general application.

70. Accordingly, the refusal by the authorities of a Member State, in this case the Federal Republic of Germany, to recognise, in all its elements, the name of one of its nationals, as established in a second Member State of which that person is also a national, constitutes a restriction on the freedoms accorded to every citizen of the Union by Articles 20 TFEU and 21 TFEU.

D – *Justification*

71. It remains to consider whether the infringement of Article 18 TFEU and the restriction on the freedom of movement guaranteed by Article 21 TFEU are capable of being justified.

72. In that regard, the referring court puts forward four considerations which might justify refusing registration, namely the principle of continuity of names, the arbitrary nature of the change of name in the United Kingdom, the length of the chosen name and the abolition of titles of nobility.

1. The principle of continuity of names

73. According to the referring court, although a voluntary change of forename and surname is not allowed in German law, the reason is primarily that a name should be available as a reliable and permanent identifying feature.

74. However, as the Court held in paragraphs 30 and 31 of the judgment in *Grunkin and Paul* (C-353/06, EU:C:2008:559), neither the principle of certainty nor the principle of continuity, 'put forward in support of the connecting factor of nationality for determination of a person's surname, however legitimate those grounds may be in themselves, warrants having such importance attached to it as to justify … a refusal by the competent authorities of a Member State to recognise the surname [of the person concerned] as already determined and registered in another Member State'.

75. In so far as the connecting factor of nationality seeks to ensure that a person's surname may be determined with continuity and stability, it should be pointed out, as the Court held in paragraph 32 of that judgment, that 'that connecting factor will result in an outcome contrary to that sought' because every time Mr Bogendorff von Wolffersdorff crosses the border between the United Kingdom and Germany, he will bear a different name, not to mention the possibility that he might take up residence in another Member State, in which case he could freely choose one or other of the names.

2. The voluntary nature of the change of name

76. According to the referring court, the divergence in the names contained in Mr Bogendorff von Wolffersdorff's British and German passports does not derive from the circumstances of his birth or from an adoption or other change in his status. On the contrary, it was deliberately brought about by Mr Bogendorff von Wolffersdorff, who, in the course of the procedure, did not state any reasons which made his choice of name appear understandable or even necessary. In ruling that the decision to change his name in the United Kingdom was dictated only by reasons of personal preference, the referring court raises the question whether that choice of Mr Bogendorff von Wolffersdorff is deserving of protection.

77. At the hearing, the central legal service of the city of Karlsruhe dwelt on the fact that there exists in German law no opportunity freely to choose a name such as that taken by Mr Bogendorff von Wolffersdorff in the United Kingdom and that the city of Karlsruhe would have objected to the British name even if it contained no title of nobility. [26] At the hearing, the central legal service of the city of Karlsruhe also argued that the voluntary nature of the change of name conflicted with German public policy because German law does not allow such a change.

78. I do not share that view because it leads to the complete and almost automatic failure to take account of a name legally used in another Member State.

79. As argued by the Commission, an individual is deserving of protection, even in the case of a voluntary change to his forenames and his surname, in this case by a deed-poll declaration. [27]

80. First, as the Court has already held in paragraph 52 of the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), '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'.

81. In that regard, the European Court of Human Rights has held that, 'whilst … recognising that there may exist genuine reasons prompting an individual to wish to change his or her name, the Court accepts that legal restrictions on such a possibility may be justified in the public interest; for example in order to ensure accurate population registration or to safeguard the means of personal identification and of linking the bearers of a given name to a family'. [28]

82. Therefore, contrary to what is claimed by the central legal service of the city of Karlsruhe, since the voluntary nature of the change of name does not in itself undermine the general interest, it cannot justify a restriction on Articles 18 TFEU and 21 TFEU.

26 — In the words of the representative of the central legal service of the city of Karlsruhe, 'even if, in this case, the change of surname was from Ramirez to Schroeder, we would use exactly the same arguments'.

27 — See point 14 of this Opinion.

28 — Judgment in *Stjerna* v. *Finland* of 25 November 1994, Series A No 299-B, § 39.

83. Secondly, individuals are deserving of protection even where, for whatever reason, they requested the change to their name because there exists inconvenience at both professional and private levels created by bearing different names in different Member States — such as for example difficulty in benefiting, in one Member State of which they are nationals, from the legal effects of diplomas or documents drawn up in the surname recognised in another Member State of which they are also nationals [29] — regardless of the question of how the name accorded was obtained.

84. Thirdly, it cannot be for the German authorities to refuse to recognise a name legally obtained by one of its nationals in another Member State on the sole basis of the arbitrariness or voluntary nature of that change of name. The prohibition on abuse of rights is sufficient to allow Member States to combat what the German Government calls 'name tourism' in its written observations.

85. As the Court held in paragraph 24 of the judgment in *Centros* (C-212/97, EU:C:1999:126), 'a Member State is entitled to take measures designed to prevent certain of its nationals from attempting, under cover of the rights created by the Treaty, improperly to circumvent their national legislation or to prevent individuals from improperly or fraudulently taking advantage of provisions of [EU] law'.

86. This implies that, unless the German authorities can demonstrate that Mr Bogendorff von Wolffersdorff moved to the United Kingdom and resided there for several years with the sole intention of artificially creating the circumstances necessary to change his forenames and his surname in order to satisfy the conditions for application of Paragraph 48 of the EGBGB, the refusal to recognise the British name of Mr Bogendorff von Wolffersdorff cannot be justified by the mere fact that the name change occurred at the initiative of the bearer of the name.

87. Like the Commission, I also think that there is no abuse in this case and would note, from a reading of the request for a preliminary ruling, that the national court is inclined to consider that Mr Bogendorff von Wolffersdorff's interests were centred in London during the period from 2001 to 2005. His link to the United Kingdom, of which he is a national, was neither fictional nor abusive.

88. As regards the argument of the central legal service of the city of Karlsruhe that the voluntary nature of the name change conflicts with German public policy, it should be noted that, although the Court found that public policy is capable of justifying a restriction on Articles 20 TFEU and 21 TFEU, [30] that concept does not cover all mandatory rules of domestic law from which individuals cannot deviate. Rather, as the Court held in paragraph 86 of the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), 'public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society'.

89. It seems to me obvious that, although German law does not allow a name to be freely changed by voluntary act, the rule in question falls short of the high threshold of public policy as referred to in the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806).

3. The length of the name

90. According to the referring court, the German legal order also pursues the objective of avoiding surnames which are of a disproportionate length or too complicated. In that regard, it notes that the name chosen by the applicant in the main proceedings, namely Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff, is, for Germany, unusually long.

29 — See judgments in *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 36) and *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraphs 22 and 23).

30 — See judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraphs 85 and 86). See points 96 and 97 of this Opinion.

91. However, that type of consideration cannot succeed. As the Court held in paragraph 36 of the judgment in *Grunkin and Paul* (C-353/06, EU:C:2008:559), 'such considerations of administrative convenience cannot suffice to justify an obstacle to freedom of movement'. It must therefore be rejected in this case.

4. The abolition of titles of nobility

92. Referring to the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), the central legal service of the city of Karlsruhe and the German Government consider that the addition of the former titles of nobility 'Graf' (Count) and 'Freiherr' (Baron) to the family name could conflict with German public policy as an unacceptable infringement of the principle of the equality of Germans before the law and the constitutional choice of abolishing the nobility enshrined in Article 109(3) of the Weimar Constitution, read in conjunction with Paragraph 123 of the Basic Law.

93. It should be noted from the outset that Mr Bogendorff von Wolffersdorff seeks to change not just his surname, but also his forenames of 'Nabiel Peter' to 'Peter Mark Emanuel'. Any justification based on a rejection of titles of nobility would therefore be concerned, in any event, only with the change of surname.

94. It should also be stated that the words 'Graf' and 'Freiherr' contained in Mr Bogendorff von Wolffersdorff's British surname are titles of nobility neither in English law nor in German law. More specifically, in so far as English law is concerned, they are not titles of nobility conferred by the sovereign of the United Kingdom. As regards German law, nor are they titles of nobility, since, as stated in Article 109(3) of the Weimar Constitution, titles of nobility have been abolished.

95. However, since the words 'Graf' and 'Freiherr' mean in German 'Count' and 'Baron' respectively, the argument of the German Government based on the abolition of titles of nobility must be understood as referring to the appearance of noble origin that those words produce.

96. In that regard, the Court held, in paragraph 85 of the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), that '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'. [31]

97. In paragraph 86 of that judgment, the Court 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 EU institutions ... . Thus, *public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society ...*'. [32]

98. Since the abolition of the nobility constitutes implementation of the more general principle of the equality of all German citizens before the law established by Article 109(1) of the Weimar Constitution and since the Court has already stated that '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 [being] also enshrined in Article 20 of the Charter of Fundamental Rights', [33] it could be argued that registering, in a republican country, a name obtained in another Member State which includes words which are former titles of nobility conflicts with the public policy of that country.

31 — See also, to that effect, judgment in *Grunkin and Paul* (C-353/06, EU:C:2008:559, paragraph 29).

32 — Emphasis added. See also, to that effect, judgments in *Église de scientologie* (C-54/99, EU:C:2000:124, paragraph 17) and *Omega* (C-36/02, EU:C:2004:614, paragraph 30).

33 — Judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, paragraph 89).

99. However, as I have already explained in point 177 of my Opinion in *Gazprom* (C-536/13, EU:C:2014:2414), the concept of public policy is concerned with 'rules and values [the] *breach of which cannot be tolerated* by the legal order of the place in which recognition and enforcement are sought because such a breach would be unacceptable from the viewpoint of a free and democratic State governed by the rule of law'.

100. This implies that, in order for a rule to be one of public policy, it must be a mandatory rule *so fundamental* to the legal order in question that *no* derogation from it would be possible in the context of the case at issue.

101. However, as the referring court observes, unlike the Austrian legal system which was at issue in the judgment in *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806), the German legal system, and in particular Article 109(3) of the Weimar Constitution, contains no strict prohibition on keeping titles of nobility.

102. On the contrary, although that provision of the Weimar Constitution provides that 'public law advantages or disadvantages of birth or rank are to be abolished', it adds that 'titles of nobility are valid only as part of a name'. According to German practice, titles of nobility are accepted only if they are placed after the forename. [34]

103. In those circumstances, I cannot see how the British name of Mr Bogendorff von Wolffersdorff, namely 'Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff', could conflict with German public policy or how one could speak of a genuine and sufficiently serious threat to public policy, since, although they were abolished, titles of nobility may persist as surnames in accordance with the restrictive conditions laid down in Article 109(3) of the Weimar Constitution and in the case-law.

104. Either titles of nobility are, as such, contrary to public policy and their use is prohibited, as in Austria, for all Germans or they are not and may be used by all Germans as surnames, placed after the forename instead of before it as was the case until 1918.

105. That was also the view of the Oberlandesgericht Dresden (Higher Regional Court, Dresden), which, by its order of 6 July 2011, instructed the authorities of the city of Chemnitz to register the daughter of Mr Bogendorff von Wolffersdorff under her British name, that is 'Larissa Xenia *Gräfin* von Wolffersdorff *Freiin* von Bogendorff'. [35] If doing so is not contrary to public policy in her case, I do not see how it could be in her father's case.

106. My view is strengthened by the vague answers given at the hearing by the German Government to my questions aimed at establishing, using hypothetical examples, whether a foreign name containing real foreign titles of nobility or words which are titles of nobility in German but not in the foreign language was contrary to German public policy. The German Government gave no precise answers but emphasised that the answer would depend on each specific case. However, if the prohibition on the use of titles of nobility was truly a matter of German public policy, the answer should have been simple, the same being true for the hypothetical cases.

107. Moreover, the argument of the German Government results in the use of titles of nobility being restricted in accordance with the aforementioned conditions solely to genuine titles granted under the German Empire before 1918, in order to combat the use of false titles invented by individuals. Although the genuine and sufficiently serious threat to public policy is difficult to establish and, according to the German Government, any name containing a 'false title' could be lawfully used by

34 — See the order of the Oberlandesgericht Dresden (Higher Regional Court, Dresden, Germany) of 6 July 2011, cited in point 18 of this Opinion.

35 — See point 18 of this Opinion. Emphasis added.

subsequent generations, the argument based on the protection of genuine titles of nobility would be paradoxical in the light of the values of democracy and equality which inspired the Weimar Constitution, in particular Article 109 thereof, which, according to the German Government, are intended to protect 'the Republican order'.[36]

108. In that context, I consider that the justification based on the abolition of titles of nobility must be rejected.

VI – Conclusion

109. In the light of the foregoing considerations, I propose that the Court should answer the questions referred by the Amtsgericht Karlsruhe (Local Court, Karlsruhe) as follows:

Articles 18 TFEU, 20 TFEU and 21 TFEU must be interpreted as meaning that the authorities of a Member State are obliged to recognise the change of name of a national of that Member State if that national is at the same time a national of another Member State and has acquired in that second Member State, a freely chosen name including several titles of nobility, provided that, whilst abolishing titles of nobility, the national law of the first Member State allows their use as part of the surname.

36 — Terms used by the German Government at the hearing.