JUDGMENT OF THE COURT

2 October 2003 *

In Case C-148/02,

REFERENCE to the Court under Article 234 EC by the Conseil d'État (Belgium) for a preliminary ruling in the proceedings pending before that court between

Carlos Garcia Avello

and

État belge,

on the interpretation of Articles 17 EC and 18 EC,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward,

* Language of the case: French.

A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur) and A. Rosas, Judges,

Advocate General: F.G. Jacobs,
Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr C. Garcia Avello, by P. Kileste, avocat,

— the Belgian State, by A. Snoecx, acting as Agent, assisted by J. Bourtembourg, avocat,

— the Danish Government, by J. Bering Liisberg, acting as Agent,

— the Netherlands Government, by H.G. Sevenster, acting as Agent,

— the Commission of the European Communities, by J.L. Iglesias Buhigues, C. O'Reilly and D. Martin, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Garcia Avello, represented by P. Kileste; of the Belgian State, represented by C. Molitor, avocat; of the Danish Government, represented by J. Molde, acting as Agent; of the Netherlands Government, represented by N.A.J. Bel, acting as Agent; and of the Commission, represented by J.L. Iglesias Buhigues, C. O'Reilly and D. Martin, at the hearing on 11 March 2003,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2003,

gives the following

Judgment

1 By judgment of 21 December 2001, received at the Court on 24 April 2002, the Conseil d'État (Council of State) referred for a preliminary ruling under Article 234 EC a question on the interpretation of Articles 17 EC and 18 EC.

2 That question has arisen in a dispute between Mr C. Garcia Avello, acting as the legal representative of his children, and the Belgian State concerning an application to change his children's surname.

Legal framework

Community law

3 The first paragraph of Article 12 EC provides as follows:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

4 Article 17 EC 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 complement and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'

5 Article 18(1) EC is worded 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 this Treaty and by the measures adopted to give it effect.'

National law and practice

Belgian private international law

6 The third paragraph of Article 3 of the Belgian Civil Code provides:

'The laws governing personal status and capacity shall apply to Belgian nationals, even if they are resident outside Belgium.'

7 That provision constitutes the basis on which Belgian courts apply the rule that personal status and capacity are determined by the national legislation governing such persons.

8 According to the Belgian State, where a Belgian national has at the same time one or more other nationalities, the Belgian authorities will give precedence to Belgian nationality, in accordance with the customary rule of origin codified by Article 3 of the Hague Convention of 12 April 1930 on certain questions relating to the

conflict of nationality laws (*League of Nations Treaty Series*, Vol. 179, p. 89) ('the Hague Convention'), under which 'a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses'.

The Belgian Civil Code

9 Under Article 335 of the Civil Code, which features in Chapter V, entitled 'Effects of filiation', of Title VII ('Filiation'):

'1. A child whose paternal filiation alone is established or whose paternal and maternal filiation is established at the same time shall bear the surname of its father unless the father is married and recognises a child conceived during marriage by a woman other than his spouse.

...'.

10 Article 2 of Chapter II, entitled 'Changing surnames and forenames', of the Law of 15 May 1987 on surnames and forenames provides as follows:

'Any person who has cause to change his or her surname or forename shall submit a reasoned application to the Minister for Justice.

Such application shall be submitted by the person concerned in person or by his or her legal representative.'

11 Article 3, which comes under the same chapter of that Law, provides:

'The Minister for Justice may permit a change of forename on condition that the requested forenames will neither lead to confusion nor adversely affect the applicant or third parties.

The King may, exceptionally, permit a change of surname if he considers that the application is based on serious grounds and that the requested surname will neither lead to confusion nor adversely affect the applicant or third parties.'

Administrative practice in regard to changes of surname

12 The Belgian State points out that, in order to reduce the difficulties associated with the possession of dual nationality, the Belgian authorities suggest, in situations such as that in the main proceedings, a change of surname such that children adopt only the first part of their father's surname. Exceptionally, and in particular where there are few connecting factors to Belgium, a surname may be conferred in accordance with foreign law, in particular where the family has lived in a country other than Belgium in which the child has been registered under the double surname, in order not to affect adversely that child's integration. In recent years, it claims, the administration has adopted a more flexible approach, particularly in the case where a first child born under Spanish jurisdiction has a double surname in accordance with Spanish law, whereas the second child, which has Belgian and Spanish nationality, bears the double surname of its father in accordance with Article 335(1) of the Belgian Civil Code, in order to re-establish the same surname within the family.

The dispute in the main proceedings and the question submitted for preliminary ruling

13 Mr Garcia Avello, a Spanish national, and Ms I. Weber, a Belgian national, are resident in Belgium, where they married in 1986. The two children born from their marriage, Esmeralda and Diego, who were born in 1988 and 1992 respectively, have dual Belgian and Spanish nationality.

14 In accordance with Belgian law, the Belgian Registrar of Births, Marriages and Deaths entered on the children's birth certificates the patronymic surname of their father, that is to say, 'Garcia Avello', as their own surname.

15 By reasoned application of 7 November 1995 made to the Minister for Justice, Mr Garcia Avello and his spouse requested, in their capacity as the legal representatives of their two children, that their children's patronymic surname be changed to 'Garcia Weber', pointing out that, in accordance with well-established usage in Spanish law, the surname of children of a married couple consists of the first surname of the father followed by that of the mother.

16 According to the documents on the case-file, the children in question have been registered under the family name 'Garcia Weber' with the consular section of the Spanish Embassy in Belgium.

17 By letter of 30 July 1997 the Belgian authorities suggested to the applicant in the main proceedings that he change the patronymic surname of his children to 'Garcia' in lieu of the change requested. By letter of 18 August 1997, the applicant in the main proceedings and his spouse rejected that suggestion.

18 By letter of 1 December 1997 the Minister for Justice informed Mr Garcia Avello in the following terms that his application had been rejected: 'The Government takes the view that there are insufficient grounds to propose to His Majesty the King that he grant you the favour of changing your surname to "Garcia Weber". Any request for the mother's surname to be added to the father's, for a child, is habitually rejected on the ground that, in Belgium, children bear their father's surname.'

19 On 29 January 1998 the applicant in the main proceedings, acting in his capacity as legal representative of his children Esmeralda and Diego, brought an application for annulment of that decision before the Conseil d'État, which, having regard to the parties' arguments and after setting Article 43 EC aside as being irrelevant in so far as freedom of establishment is clearly not in issue with regard to the minor children referred to in the application in question, decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are the principles of Community law relating to European citizenship and to the freedom of movement of persons, enshrined particularly in Articles 17 [EC] and 18 [EC], to be interpreted as precluding the Belgian administrative authority, to which an application to change the surname of minor children residing in Belgium who have dual Belgian and Spanish nationality has been made on the ground, without other special circumstances, that those children should bear the surname to which they are entitled according to Spanish law and tradition, from refusing that change by stating that that type of application "is habitually rejected on the ground that, in Belgium, children bear their father's surname", particularly where the position usually adopted by the authority results from the fact that it considers that the grant of a different surname may, in the context of social life in Belgium, arouse questions as to the parentage of the child concerned, but that, in order to reduce the difficulties associated with dual nationality, it is suggested to applicants in that situation that they adopt only the father's first surname, and that, exceptionally, where there are few connecting factors to Belgium or it is appropriate to re-establish the same surname among siblings, a favourable decision may be taken?'

The question submitted

20 It is first of all necessary to examine whether, contrary to the view expressed by the Belgian State and by the Danish and Netherlands Governments, the situation in issue in the main proceedings comes within the scope of Community law and, in particular, of the Treaty provisions on citizenship of the Union.

21 Article 17 EC confers the status of citizen of the Union on every person holding the nationality of a Member State (see, in particular, Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 27). Since Mr Garcia Avello's children possess the nationality of two Member States, they also enjoy that status.

22 As the Court has ruled on several occasions (see, *inter alia*, Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 82), citizenship of the Union is destined to be the fundamental status of nationals of the Member States.

23 That status enables nationals of the Member States who find themselves in the same situation to enjoy within the scope *ratione materiae* of the EC Treaty the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for (see, in particular, Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31, and *D'Hoop*, cited above, paragraph 28).

24 The situations falling within the scope *ratione materiae* of Community law include those involving 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 18 EC (Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraphs 15 and 16, *Grzelczyk*, cited above, paragraph 33, and *D'Hoop*, paragraph 29).

25 Although, as Community law stands at present, the rules governing a person's surname are matters coming within the competence of the Member States, the latter must none the less, when exercising that competence, comply with Community law (see, by way of analogy, Case C-336/94 *Dafeki* [1997] ECR I-6761, paragraphs 16 to 20), in particular the Treaty provisions on the freedom of every citizen of the Union to move and reside in the territory of the Member States (see, *inter alia*, Case C-135/99 *Elsen* [2000] ECR I-10409, paragraph 33).

26 Citizenship of the Union, established by Article 17 EC, is not, however, intended to extend the scope *ratione materiae* of the Treaty also to internal situations which have no link with Community law (Joined Cases C-64/96 and C-65/96 *Uecker and Jacquet* [1997] ECR I-3171, paragraph 23).

27 Such a link with Community law does, however, 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.

28 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 Treaty (see in particular, to that effect, Case C-369/90 *Micheletti and Others* [1992] ECR I-4239, paragraph 10). Furthermore, Article 3 of the Hague Convention, on which the Kingdom of Belgium relies in recognising only the nationality of the forum where there are several nationalities, one of which is Belgian, does not impose an obligation but simply provides an option for the contracting parties to give priority to that nationality over any other.

29 That being so, the children of the applicant in the main proceedings may rely on the right set out in Article 12 EC not to suffer discrimination on grounds of nationality in regard to the rules governing their surname.

30 It is for that reason necessary to examine whether Articles 12 EC and 17 EC preclude the Belgian administrative authority from turning down an application for a change of surname in a situation such as that in the main proceedings.

31 It is in this regard 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 (see, *inter alia*, Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 61). Such treatment may be justified only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the objective being legitimately pursued (see, *inter alia*, *D'Hoop*, paragraph 36).

32 In the present case, it is agreed that persons who have, in addition to Belgian nationality, the nationality of another Member State are, as a general rule, treated in the same way as persons who have only Belgian nationality on the ground that,

in Belgium, persons having Belgian nationality are exclusively regarded as being Belgian. In the same way as Belgian nationals, Spanish nationals who also happen to have Belgian nationality will normally be refused the right to change their surname on the ground that, in Belgium, children take the surname of their father.

33 Belgian administrative practice, which, as is clear from paragraph 12 of the present judgment and from the question submitted, allows derogations from this latter rule, refuses to countenance among such derogations the case of persons who are in a situation such as that here in the main proceedings and who seek to rectify the discrepancy in their surname resulting from the application of the legislation of two Member States.

34 It is for that reason necessary to determine whether those two categories of persons are in an identical situation or whether, on the contrary, their situations are different, in which case the principle of non-discrimination would mean that Belgian nationals, such as the children of Mr Garcia Avello, who also have the nationality of another Member State may assert their right to be treated in a manner different to that in which persons having only Belgian nationality are treated, unless the treatment in issue can be justified on objective grounds.

35 In contrast to persons having only Belgian nationality, Belgian nationals who also hold Spanish nationality have different surnames under the two legal systems concerned. More specifically, in a situation such as that in issue in the main proceedings, the children concerned are refused the right to bear the surname which results from application of the legislation of the Member State which determined the surname of their father.

36 As the Advocate General has pointed out in paragraph 56 of his Opinion, it is common ground that such 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 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. As has been established in paragraph 33 of the present judgment, the solution proposed by the administrative authorities of allowing children to take only the first surname of their father does not resolve the situation of divergent surnames which those here involved are seeking to avoid.

37 In those circumstances, Belgian nationals who have divergent surnames by reason of the different laws to which they are attached by nationality may plead difficulties specific to their situation which distinguish them from persons holding only Belgian nationality, who are identified by one surname alone.

38 However, as has been pointed out in paragraph 33 of the present judgment, the Belgian administrative authorities refuse to treat applications for a change of surname made by Belgian nationals in a situation such as that of the children of the applicant in the main proceedings with a view to avoiding a discrepancy in surnames as being based on 'serious grounds', within the meaning of the second paragraph of Article 3 of the abovementioned Law of 15 May 1987, solely on the ground that, in Belgium, children who have Belgian nationality assume, in accordance with Belgian law, their father's surname.

39 It is necessary to examine whether the practice in issue can be justified on the grounds submitted, by way of alternative argument, by the Belgian State and by the Danish and Netherlands Governments.

40 The Belgian State submits that the principle of the immutability of surnames is a founding principle of social order, of which it continues to be an essential element, and that the King can authorise a change of surname only in quite exceptional circumstances, which do not obtain in the case in the main proceedings. In the same way as the Belgian State, the Netherlands Government argues that the infringement of the rights of the children of the applicant in the main proceedings is reduced inasmuch as those children can in any event rely on their Spanish nationality and the surname conferred in accordance with Spanish law in every Member State other than Belgium. The practice in issue makes it possible to avoid risks of confusion as to identity or parentage of those concerned. According to the Danish Government, that practice, in so far as it applies the same rules to Belgian nationals who are also nationals of another Member State as it does to persons who are nationals of Belgium alone, contributes to facilitating integration of the former in Belgium and to attainment of the objective pursued by the principle of non-discrimination.

41 None of those grounds can provide valid justification for the practice in issue.

42 First, with regard to the principle of the immutability of surnames as a means designed to prevent risks of confusion as to identity or parentage of persons, although that principle undoubtedly helps to facilitate recognition of the identity of persons and their parentage, it is still not indispensable to the point that it could not adapt itself to a practice of allowing children who are nationals of one Member State and who also hold the nationality of another Member State to take a surname which is composed of elements other than those provided for by the law of the first Member State and which has, moreover, been entered in an official register of the second Member State. Furthermore, it is common ground that, by reason in particular of the scale of migration within the Union, different national systems for the attribution of surnames coexist in the same Member State, with the result that parentage cannot necessarily be assessed within the social life of a Member State solely on the basis of the criterion of the system

applicable to nationals of that latter State. In addition, far from creating confusion as to the parentage of the children, a system allowing elements of the surnames of the two parents to be handed down may, on the contrary, contribute to reinforcing recognition of that connection with the two parents.

43 Second, with regard to the objective of integration pursued by the practice in issue, suffice it to point out that, in view of the coexistence in the Member States of different systems for the attribution of surnames applicable to those there resident, a practice such as that in issue in the main proceedings is neither necessary nor even appropriate for promoting the integration within Belgium of the nationals of other Member States.

44 The disproportionate nature of the refusal by the Belgian authorities to accede to requests such as that in issue in the main proceedings is all the more evident when account is taken of the fact that, as is clear from paragraph 12 of the present judgment and from the question submitted, the practice in issue already allows derogations from application of the Belgian system of handing down surnames in situations similar to that of the children of the applicant in the main proceedings.

45 Having regard to all of the foregoing, the answer to the question submitted must be that Articles 12 EC and 17 EC must be construed as precluding, in circumstances such as those of the case in the main proceedings, the administrative authority of a Member State from refusing to grant an application for a change of surname made on behalf of minor children resident in that State and having dual nationality of that State and of another Member State, in the case where the purpose of that application is to enable those children to bear the surname to which they are entitled according to the law and tradition of the second Member State.

Costs

46 The costs incurred by the Danish and Netherlands Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Conseil d'État by judgment of 21 December 2001, hereby rules:

Articles 12 EC and 17 EC must be construed as precluding, in circumstances such as those of the case in the main proceedings, the administrative authority of a

Member State from refusing to grant an application for a change of surname made on behalf of minor children resident in that State and having dual nationality of that State and of another Member State, in the case where the purpose of that application is to enable those children to bear the surname to which they are entitled according to the law and tradition of the second Member State.

Rodríguez Iglesias	Wathelet	Schintgen
Timmermans	Edward	La Pergola
Jann	Skouris	Macken
Colneric		von Bahr
Cunha Rodrigues		Rosas

Delivered in open court in Luxembourg on 2 October 2003.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President