Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 June 2017 *

(Reference for a preliminary ruling — Citizenship of the Union — Article 21 TFEU — Freedom to move and reside in the Member States — Individual having the nationality of both the Member State in which he resides and the Member State in which he was born — Change of surname in the Member State of birth not carried out during a period of habitual residence — Name corresponding to birth name — Application for the entry of that name in the civil register of the Member State of residence — Rejection of that application — Reason — Name not acquired during a period of habitual residence — Existence of other procedures in national law to have that name recognised)

In Case C-541/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Wuppertal (District Court, Wuppertal, Germany), made by decision of 24 September 2015, received at the Court on 16 October 2015, in the proceedings brought by

Mircea Florian Freitag

interveners:

Angela Freitag,

Vica Pavel,

Stadt Wuppertal,

Oberbürgermeister der Stadt Wuppertal,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: M. Szpunar,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 15 September 2016,

after considering the observations submitted on behalf of:

— the German Government, by M. Hellmann, T. Henze and J. Mentgen, acting as Agents,

* Language of the case: German.

— the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and M. Castelo-Branco, acting as Agents,

— the Romanian Government, by A. Wellman and R.H. Radu, acting as Agents,

— the European Commission, by E. Montaguti and G. von Rintelen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 November 2016,

gives the following

Judgment

1 This present request for a preliminary ruling concerns the interpretation of Articles 18 and 21 TFEU.

2 The request has been made in proceedings brought by Mircea Florian Freitag concerning the recognition, in Germany, and the entry in the civil register of a change of surname to a name legally acquired in Romania.

Legal context

The relevant provisions of the Introductory Law to the Civil Code

3 Paragraph 5 of the Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory Law of the Civil Code) of 21 September 1994 (BGB1. 1994 I, p. 2494; corrigendum BGB1. 1997 I, p. 1061), in the version applicable to the facts in the main proceedings ('the EGBGB'), entitled 'Personal status', provides, in the first and second sentences of its first paragraph:

'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 status takes precedence.'

4 Paragraph 10 of the EGBGB, entitled 'Name', provides, in paragraph 1:

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

5 Paragraph 48 of the EGBGB, entitled 'Choice of a name acquired in another Member State of the European Union', stipulates:

'If a person's name is subject to German law, he may, by declaration to the registry office, choose the name acquired during habitual residence in another Member State of the European Union and entered in a register of personal status there, where this is not manifestly incompatible with essential principles of German law. The choice of name shall take effect retroactively from the date of entry in the register of personal 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. ...'

The law on changes of name

6 In German law, changes of name are governed by public law, and in particular by the procedure laid down in the Gesetz über die Änderung von Familiennamen und Vornamen (NamÄndG) (the Law on changes of surnames and first names) of 5 January 1938 (RGBl. 1938 I, p. 9), as amended by Paragraph 54 of the Law of 17 December 2008 (BGBl. 2008 I, p. 2586) ('the Law on changes of name').

7 Paragraph 1 of the Law on changes of name is worded as follows:

'The surname of a German national or a stateless person who has his residence or habitual abode [in Germany] may be changed on application.'

8 Paragraph 3(1) of that Law provides:

'A surname may be changed only if the change is justified by a compelling reason.'

9 Under Paragraph 3(2) of the Law on changes of name, the facts of the case that are relevant to the decision must be assessed *ex officio*.

10 Under Paragraph 5(1) of the Law on changes of name, the application for a change of surname must be made to the lower administrative authority in whose district the applicant has his residence or abode.

11 Point 27(1) of the Allgemeine Verwaltungsvorschrift zum Gesetz über die Änderung von Familiennamen und Vornamen (NamÄndVwV) (General administrative provisions relating to the Law on changes of surnames and first names) of 11 August 1980, as last amended by the Administrative provisions of 11 February 2014 (BAnz. AT, 18 February 2014, B2) ('the Administrative provisions on changes of name'), is worded as follows:

'The name of persons is governed in detail and — in principle — exhaustively by the relevant provisions of civil law. The change of name, which is subject to public administrative law, serves to eliminate detrimental effects in a specific case. It is exceptional in nature. Consequently, it must first be verified whether the objective pursued cannot be achieved by a declaration of change of name under civil law or by an order of a court dealing with guardianship matters.'

12 Point 28 of those administrative provisions provides:

'A surname may be changed only if the change is justified by a compelling reason. A compelling reason exists where the legitimate interest of the applicant … in changing the name outweighs any contrary legitimate interests of other parties involved … and the principles in relation to names arising from legal provisions, including the social regulatory function of names and the public interest in maintaining existing names …'

13 Under point 31 of those administrative provisions:

'If the weighing of interests that must be carried out in accordance with point 28 shows that the applicant has an overriding legitimate interest in changing his surname and there is therefore a compelling reason justifying that change, the application should generally be accepted. Factors already taken into account during the weighing of interests intended to establish the existence of a compelling reason can no longer be taken into account as discretionary grounds. If there is no compelling ground justifying the change of name, the application must be rejected.'

14 Point 49 of the Administrative provisions on changes of name provides:

'Where a German national who also holds the nationality of another State uses, under the law of that other State, a surname other than that which he is required to use by law within the territory subject to the German law, such inconsistent use of the name may be eliminated by changing the surname to be used within the territory subject to the German law to the surname to be used under the law of the other State. If, on the other hand, it is the other surname which is to be relinquished, the person concerned must apply to the authorities of the other State of which he is also a national.'

15 If the competent administrative authority refuses to grant the application for a change of name, administrative remedies are available to challenge such a decision. If, on the other hand, the competent administrative authority grants the application for a change of surname, it must ensure inter alia that the change of name gives rise to an update or is recorded in the civil register.

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

16 The applicant in the main proceedings was born on 25 April 1986 in Romania, under the surname Pavel. He is the son of Angela Freitag and Vica Pavel, who are Romanian nationals, and he has Romanian nationality.

17 After the divorce of his parents, his mother married a German national, Mr Freitag.

18 By a court order of 21 May 1997, Mr Freitag adopted the applicant in the main proceedings, who thereby also acquired German nationality and has since then borne the surname Freitag.

19 By administrative act of the District Council of Brașov (Romania) of 9 July 2013, the applicant in the main proceedings changed his surname, at his own request, back to Pavel. During the process of the name change in Romania, the applicant in the main proceedings had his habitual residence in Germany.

20 The applicant in the main proceedings then presented himself at the Standesamt der Stadt Wuppertal (Registry Office of Wuppertal, Germany), producing his new Romanian passport issued in the name of Pavel, and requested that the name change also be recognised under German law and that the civil register be updated accordingly.

21 Since it entertained doubts as to whether it was possible to make a subsequent entry in the civil register, the Registry Office of Wuppertal and the Oberbürgermeister der Stadt Wuppertal (the Mayor of Wuppertal, Germany), acting as the lower registry office supervisory authority, referred the matter to the Amtsgericht Wuppertal (District Court, Wuppertal, Germany) for assessment.

22 According to the referring court, in so far as the applicant in the main proceedings had his habitual residence in Germany during the change of name process in Romania, Paragraph 48 of the EGBGB is not applicable, since that provision makes the right to choose, by declaration to the registry office, a name acquired in another EU Member State subject to the condition that the name in question must have been acquired during a period of habitual residence in that other Member State, which is not satisfied in this case.

23 The referring court states that an application by analogy of Paragraph 48 of the EGBGB is also not possible. It is clear from documents relating to the legislative procedure that the legislature intended, in particular, to give effect to the requirements resulting from the judgment of 14 October 2008, *Grunkin and Paul* (C-353/06, EU:C:2008:559), and that it was aware of the fact that that provision does not cover all situations of inconsistent surnames.

24 The referring court therefore asks whether Articles 18 and 21 TFEU contain an obligation to recognise a change of name which has taken place in another Member State where, although the person concerned was not habitually resident in that other Member State, he has another connection with that Member State by virtue of his dual nationality.

25 In those circumstances, the Amtsgericht Wuppertal (Wuppertal District Court) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘Are Articles 18 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 that person is at the same time a national of another Member State and has, in that other Member State, by means of a change of name not associated with a change in family-law status, (re-)acquired his original family name received at the time of birth, even though the acquisition of that name did not take place during the habitual residence of that national in that other Member State and was carried out at his own request?’

Consideration of the question referred

Preliminary observations

26 As a preliminary point, it must be observed that the referring court relies on Paragraph 48 of the EGBGB when, by its question, it seeks to ascertain whether Articles 18 and 21 TFEU preclude the competent authorities of a Member State from refusing to recognise the surname legally acquired, by a national of that Member State, in another Member State of which he is also a national, even though he did not have his habitual residence in that other Member State.

27 It must be noted that, in its request, the referring court mentions the existence, also highlighted by the German Government and the European Commission, of a separate public law procedure, laid down by the Law on changes of name, by which a person may apply to the administrative authority for a change of name.

28 That procedure laid down by the Law on changes of name is, according to the German Government, applicable in a situation such as that of the applicant in the main proceedings, since, even though Paragraph 48 of the EGBGB is, in principle, applicable to the applicant, nevertheless he does not satisfy the condition of habitual residence in another Member State required by that provision. According to the German Government, the procedure laid down by the Law on changes of name allows a person, in a situation comparable to that of the applicant in the main proceedings, to acquire the right to bear the name obtained under the law of another Member State by making an application to that effect to the competent administrative authority.

29 In the procedure providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (see, inter alia, judgment of 19 September 2013, *Betriu Montull*, C-5/12, EU:C:2013:571, paragraph 40).

30 In those circumstances, the question raised by the referring court must be understood as asking, in essence, whether Articles 18 and 21 TFEU must be interpreted as precluding the registry office of a Member State from refusing to recognise and enter in the civil register the name legally acquired by a national of that Member State in another Member State, of which he is also a national, and which is the same as his birth name, on the basis of a provision of national law which makes the possibility of having such an entry made, by declaration to the registry office, subject to the condition that that name

must have been acquired during a period of habitual residence in that other Member State, even though other provisions of national law allow the same national to make an application for a change of name to another authority, which has the discretionary power to decide on that application.

31 It must be added that, in accordance with the Court's settled case-law, Article 21 TFEU contains not only the right to move and reside freely in the territory of the Member States but also a prohibition of any discrimination on grounds of nationality. Consequently, the applicant's situation should be examined in the light of that provision alone (judgment of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 65; see, by analogy, judgment of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 34).

The scope of EU law

32 As a preliminary point, it should be examined whether the situation of the applicant in the main proceedings falls within the scope *ratione materiae* of EU law and, in particular, of the rules governing the exercise by an EU citizen of his right of free movement and prohibiting discrimination.

33 It follows from settled case-law that although, as EU law stands at present, the rules governing the way in which a person's surname is entered on certificates of civil status are matters coming within the competence of the Member States, the latter must nonetheless, when exercising that competence, comply with EU law and, in particular, with the FEU Treaty provisions on the freedom of every citizen of the Union to move and reside in the territory of the Member States (judgments of 2 October 2003, *Garcia Avello*, C-148/02, EU:C:2003:539, paragraph 25; of 14 October 2008, *Grunkin and Paul*, C-353/06, EU:C:2008:559, paragraph 16; of 22 December 2010, *Sayn-Wittgenstein*, C-208/09, EU:C:2010:806, paragraphs 38 and 39; of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 63; and of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 32).

34 According to settled case-law, a link with EU law exists in regard to nationals of one Member State lawfully resident in the territory of another Member State (judgment of 2 October 2003, *Garcia Avello*, C-148/02, EU:C:2003:539, paragraph 27). That is the case as regards the applicant in the main proceedings, who is a Romanian national and is resident in the territory of the Federal Republic of Germany, of which he is also a national.

Whether there exists a restriction of free movement for the purposes of Article 21 TFEU

35 It must be borne in mind that the Court has repeatedly 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 (judgments of 14 October 2008, *Grunkin and Paul*, C-353/06, EU:C:2008:559, paragraph 21; of 22 December 2010, *Sayn-Wittgenstein*, C-208/09, EU:C:2010:806, paragraph 53; of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 68; and of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 36).

36 It also follows from the case-law of the Court that a refusal by the authorities of a Member State to recognise the name of a national of that State who exercised his right of free movement in the territory of another Member State, as determined in that second Member State, is likely to hinder the exercise of the right, enshrined in Article 21 TFEU, to move and reside freely in the territories of the Member States. Confusion and inconvenience are liable to arise from the divergence between the two names used for the same person (see, to that effect, judgment of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 37).

37 In that regard, it must be borne in mind that 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 (judgments of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 73, and of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 43).

38 For a national of two Member States, such as the applicant in the main proceedings, there is a real risk — because he bears two different surnames, namely Pavel and Freitag — of being obliged to dispel doubts as to his identity and the authenticity of the documents submitted, or the veracity of their content, which, as the Court has ruled, is such as to hinder the exercise of the right which flows from Article 21 TFEU (see judgments of 22 December 2010, *Sayn-Wittgenstein*, C-208/09, EU:C:2010:806, paragraph 70, and of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 40).

39 Consequently, the refusal, by the registry office of a Member State, to recognise and enter in the civil registers the name legally acquired by a national of that Member State in another Member State of which he is also a national, on the basis of a provision of national law which makes the possibility of having such an entry made, by declaration to the registry office, subject to the condition that that name must have been acquired during a period of habitual residence in that other Member State, is likely to hinder the exercise of the right, enshrined in Article 21 TFEU, to move and reside freely in the territories of the Member States.

40 The German Government nevertheless submits that, because German law includes other legal bases for changing a name at the request of the person concerned, namely the relevant provisions of the Law on changes of name, there is no obstacle to the free movement of persons which could stem from an inconsistent use of surnames. Although Paragraph 3(1) of the Law on changes of name makes such a change subject to the condition that it must be justified by a compelling reason, it follows from point 49 of the administrative provisions relating to the Law on changes of name that the elimination of a difference in surnames as regards German nationals with double nationality constitutes such a compelling reason. Thus, in a situation such as that at issue in the main proceedings, the individual concerned could obtain recognition of the name legally acquired in the other Member State by making an application under the Law on changes of name to the competent administrative authority.

41 In that respect, in order for administrative provisions such as the German administrative provisions relating to names, taken in their entirety, to be regarded as compatible with EU law, the provisions or the domestic procedure allowing an application to be made for a change of name must not make the implementation of the rights conferred by Article 21 TFEU impossible or excessively difficult. In principle, it is immaterial, from the point of view of EU law, under which national provision or procedure the applicant is able to assert his rights concerning his name.

42 In the absence of EU legislation in respect of modification of surnames, it is for the domestic legal system of each Member State to determine the detailed rules laid down by national law and intended to safeguard the rights which individuals derive from EU law, provided, first, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, second, that they do not render impossible or excessively difficult in practice the exercise of rights conferred by the EU legal order (principle of effectiveness) (see, inter alia, by analogy, judgments of 12 September 2006, *Eman and Sevinger*, C-300/04, EU:C:2006:545, paragraph 67; of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 75; and of 8 March 2017, *Euro Park Service*, C-14/16, EU:C:2017:177, paragraph 36).

43 It is for the referring court to assess whether it may itself implement the rights conferred by Article 21 TFEU and recognise the right to recognition of the name acquired in circumstances such as those in the main proceedings or whether the applicant in the main proceedings must use the public law procedure referred to in the Law on changes of name.

44 As indicated in paragraph 40 of the present judgment, the German government submits that the elimination of a difference in surnames constitutes a 'compelling reason' within the meaning of paragraph 3(1) of the Law on changes of name. In addition, the exercise by a national such as the applicant in the main proceedings of his rights under Article 21 TFEU cannot be called into question by the discretion enjoyed by the competent German authorities.

45 It must be emphasised, in that respect, that that discretion must be exercised by the competent authorities in such a way as to give full effect to Article 21 TFEU.

46 It is important, in particular, that the existing procedure under German law allowing for changes of name is such as to ensure that the existence of a 'compelling reason' may be established in circumstances such as those in the main proceedings, in which the person concerned has connections to the Member State in which he acquired his name other than habitual residence, such as nationality, in order to allow the recognition of the name acquired in another Member State.

47 Consequently, the answer to the question referred is that Article 21 TFEU must be interpreted as precluding the registry office of a Member State from refusing to recognise and enter in the civil register the name legally acquired by a national of that Member State in another Member State, of which he is also a national, and which is the same as his birth name, on the basis of a provision of national law which makes the possibility of having such an entry made, by declaration to the registry office, subject to the condition that that name must have been acquired during a period of habitual residence in that other Member State, unless there are other provisions of national law which effectively allow the recognition of that name.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Article 21 TFEU must be interpreted as precluding the registry office of a Member State from refusing to recognise and enter in the civil register the name legally acquired by a national of that Member State in another Member State, of which he is also a national, and which is the same as his birth name, on the basis of a provision of national law which makes the possibility of having such an entry made, by declaration to the registry office, subject to the condition that that name must have been acquired during a period of habitual residence in that other Member State, unless there are other provisions of national law which effectively allow the recognition of that name.

[Signatures]