



A Member State may refuse to recognise on public policy grounds the surname of a national which has been obtained in another Member State and contains a title of nobility

The European Union ensures the observance of the principle of equal treatment of citizens, which is implemented by the Austrian Law on the abolition of the nobility

Following her adoption, in 1991, by Mr Lothar Fürst von Sayn-Wittgenstein, a German citizen, Mrs Ilonka Sayn-Wittgenstein, an Austrian citizen resident in Germany, acquired his surname, along with his title of nobility, as her name at birth, in the form 'Fürstin von Sayn-Wittgenstein' ('Princess of Sayn-Wittgenstein'). In Germany she obtained a driving licence under that name and she established a company. The Austrian authorities, for their part, registered that surname in the Austrian register of civil status. They also renewed and issued a passport and issued certificates of nationality in the name of Ilonka Fürstin von Sayn-Wittgenstein.

However, the Verfassungsgerichtshof (Austrian Constitutional Court) held in 2003, in a similar case, that the Law on the abolition of the nobility of 1919 – which is of constitutional status and implements the principle of equal treatment – precludes an Austrian citizen from acquiring a surname which includes a title of nobility by means of adoption by a German citizen who is permitted to bear that title as a constituent element of his name. Prompted by that judgment, and considering that the birth certificate issued to Mrs Ilonka Fürstin von Sayn-Wittgenstein following her adoption was incorrect, the Vienna authority responsible for civil status matters accordingly corrected the entry of the surname in the register of civil status to 'Sayn-Wittgenstein'.

Before the Verwaltungsgerichtshof (Austrian Administrative Court), Mrs Sayn-Wittgenstein claimed that the non-recognition of the effects of her adoption on her name amounts to an obstacle to her freedom of movement – since she would have to use different surnames in two Member States – and interference with the right to respect for family life – because of the alteration of the name she has used continuously for fifteen years.

In that context, the Austrian court asked the Court of Justice whether the principle of free movement and residence enjoyed by citizens of the Union permits the Austrian authorities to refuse to recognise all the elements of the surname of an Austrian national, as determined in Germany, where that national resides, because that surname includes a title of nobility which is not permitted under Austrian constitutional law.

The Court of Justice points out, first, that although the rules governing surnames and titles of nobility fall within the competence of the Member States, the latter must none the less comply with European Union law. Thus, a person's name is a constituent element of his identity and of his private life, the protection of which is enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Court has already held ¹ that, every time the surname used by a person in a specific situation does not correspond to that on his identity document, or the surname in two documents submitted

¹ Case C-353/06 *Grunkin and Paul*, judgment of 14 October 2008 (see also [press release](#)).

together is not the same, doubts may arise as to that person's identity and the authenticity of his documents, or the veracity of their content. The real risk simply of being obliged to dispel doubts as to one's identity constitutes an obstacle to the freedom of movement.

However, that obstacle may be justified if it is based on objective considerations and is proportionate to the legitimate objective of the national provisions.

In that regard, the Court notes that the European Union is to respect the national identities of its Member States, which include the status of the State as a Republic. The Court therefore accepts that, in the context of Austrian constitutional history, the Law on the abolition of the nobility may be regarded as a public policy justification and, accordingly, weighed in the balance with the right of free movement of persons recognised under European Union law.

That concept of public policy justifying a derogation from a fundamental freedom must be interpreted strictly and cannot be determined unilaterally by each Member State without any control by the European Union institutions. Nevertheless, the specific circumstances which may justify recourse to the concept of public policy may vary from one Member State to another and from one era to another. The national authorities enjoy a margin of discretion within the limits imposed by the Treaty.

In relation to Austria, it is apparent that **the Law on the abolition of the nobility constitutes implementation of the more general principle of equality before the law of all Austrian citizens, a principle which the European Union legal system seeks to ensure as a general principle of law.**

Measures which restrict a fundamental freedom may be justified on public policy grounds only if they are necessary for the protection of the interests which they are intended to secure and only if those objectives cannot be attained by less restrictive measures.

According to the Court, it is not disproportionate for a Member State to seek to attain the objective of protecting the principle of equal treatment by prohibiting any acquisition, possession or use, by its nationals, of titles of nobility or noble elements which may create the impression that the bearer of the name is holder of such a rank.

Consequently, the Court answers that the refusal by the authorities of a Member State to recognise all the elements of the surname of a national of that State, as determined in another Member State at the time of his or her adoption as an adult by a national of that other Member State, where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law, does not unjustifiably undermine the freedom to move and reside enjoyed by citizens of the Union.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355