OPINION OF ADVOCATE GENERAL JACOBS

delivered on 9 December 1992 *

My Lords,
Members of the Court,

1. The Amtsgericht Tübingen has asked the Court to give a preliminary ruling on the interpretation of Articles 5, 7, 48, 52, 59 and 60 of the EEC Treaty with regard to certain provisions of German law which require Greek names to be transliterated into Roman characters according to a system that is phonetically inaccurate.

2. The applicant in the main proceedings is a Greek national who works in Altensteig (Germany) as a self-employed masseur and assistant hydrotherapist. According to his Greek birth certificate, his first name is Hréstos and his surname is Kónstantinidés. He wishes those names to be transcribed in Roman characters as 'Christos Konstantinidis' on the ground that such a spelling indicates as accurately as possible to German speakers the correct pronunciation of his name in Greek. He also points out that his name is thus transcribed in Roman characters in his Greek passport.

3. On 1 July 1983 he married a German national at the Altensteig registry office. His name was entered in the marriage register as 'Christos Konstadinidis'. On 31 October 1990 he applied to the registry office for the entry of his surname to be rectified from 'Konstadinidis' to 'Konstantinidis'. That request was forwarded, via the Landratsamt Calw (District Office), to the Amtsgericht Tübingen, which took the view that under the relevant provisions of German law the name entered in the marriage register must correspond to the name on Mr Konstantinidis' birth certificate. It therefore obtained a translation of the Greek birth certificate from a qualified translator, who conscientiously applied a system of transliteration developed by the International Organization for Standardization (ISO) [1] which resulted in the applicant's name being rendered as 'Hrestos Konstantinides', with a horizontal bar written above the letter 'e' in the first name and above the 'o' and 'e' in the surname. The Landratsamt Calw thereupon submitted an application for the entry in the marriage register to be corrected so as to correspond to the ISO system of transliteration (except only that the horizontal bars were to be replaced by acute accents [2]).

1 — The only version of the system placed before the Court is a draft version attached to the Greek Government's observations (Draft International Standard ISO/DIS 843.2). That draft is apparently a proposed revision of a standard adopted in 1968. It is not clear whether the draft has been adopted or not, but it does seem to have been followed by the person who translated Mr Konstantinidis' birth certificate on behalf of the Amtsgericht Tübingen.

2 — No explanation has been offered for the use of acute accents instead of horizontal bars. It could be simply that the typewriters or word-processors used by the German authorities, like those at the Court of Justice, have difficulty in writing horizontal bars above letters.

* Original language: English.

4. The Amtsgericht Tübingen considers that, as a matter of German law, the applicant's name must be recorded in the marriage register as Hréstos Kónstantinidés, even though that spelling is intensely distasteful to the applicant and does not convey an accurate impression of the way that his name is pronounced in Greek. The Amtsgericht Tübingen arrives at that conclusion by the following process. German law requires names in registers of civil status to correspond to the names recorded on a person's birth certificate. Registers are to be kept in the German language and in the German or Roman alphabet. Foreign names written in a language that uses a different alphabet are to be rendered as far as possible by transliteration, that is to say, each character in the foreign alphabet is to be rendered by the equivalent character in the Roman alphabet. In the case of Greek names a system of transliteration recommended by the ISO is to be used. That is in accordance with Article 3 of the Convention on the Representation of Names and Surnames in Registers of Civil Status (Convention No 14 of the International Commission on Civil Status) of 13 September 1973 (*Bundesgesetzblatt* 1976 II, p. 1473). Article 3 provides as follows:

'Where an entry must be made in a register of civil status by an authority of a contracting State and there is presented for that purpose a copy of, or an extract from, an entry in a register of civil status or another document indicating the surnames and first names in characters other than those of the language in which the entry is to be made, those surnames and first names shall, without translation, be reproduced by means of transliteration in so far as is possible. If rules recommended by the International Organization for Standardization (ISO) exist, those rules shall be applied.' [3]

As we have seen, an ISO standard for the transliteration of Greek names does indeed exist and it results in the applicant's name being written 'Hréstos Kónstantinidés'.

5. The Amtsgericht Tübingen considers that, if Mr Konstantinidis is compelled to have his name spelt in accordance with the ISO standard in the marriage register, his rights under Community law may be infringed. It has therefore referred the following questions to the Court:

'1. Is it an encroachment, contrary to Articles 5 and 7 of the Treaty establishing the European Economic Community, on the rights of a national of a Member State of the European Communities who is an employed or self-employed person covered by Articles 48, 52 and 59 et seq. of the said treaty for him to be obliged to allow his name to be entered in the registers of civil status of his host country, another Member State, against his express wishes, in a transliteration differing from the phonetic transcription, whereby its pronunciation is modified and distorted?

Specifically, does the fact that the Greek name Christos Konstantinidis (in a direct phonetic transcription) thus becomes "Hréstos Kónstantinidés" constitute such an encroachment?

3 — Translated from the French. There does not appear to be an official English version of this Convention.

2. Does such a fact constitute an interference with the freedom of establishment and freedom to provide services laid down in Articles 52, 59 and 60 of the Treaty establishing the European Economic Community?'

The transliteration of names in general

6. Before examining the legal issues raised by the questions set out above, it might be useful to consider the general problem of the conversion of names from one alphabet to another. The approach most commonly adopted may be described as phonetic transcription. Under that method an attempt is made to convert the name from the source language (in this case Greek) into the target language (in this case German) in such a way as to convey to a native speaker of the target language the closest approximation possible of the correct pronunciation of the name. The advantage of that method is that the name will suffer the least possible phonetic distortion. The disadvantage is that, where the alphabet into which the name is converted is used by several languages and the values assigned to some of its letters vary from one language to another, a different spelling may be required for each language. Writers and publishers, who may not of course view the problem from the same perspective as the Registrar of Marriages in Altensteig or the ISO, do not appear to be greatly troubled by the absence of a uniform transliteration of foreign names. Thus Spanish newspapers speak of 'Jomeini', whereas in most countries the late ayatollah is referred to as 'Khomeini'; French journalists write 'Eltsine', whereas English ones write 'Yeltsin'; the name of the last president of the Soviet Union is written variously as 'Gorbachov', 'Gorbatschow' and 'Gorbaciov'; and the composer known in the English-speaking world as 'Tchaikovsky' is referred to in Italy as 'Ciaikovski'. Such variations were obviously less acceptable to the ISO when it set about the task of producing a system for the transliteration of Greek names that would be valid in all countries using the Roman alphabet.

7. In principle it is not for the Court of Justice to say that one system for transliterating Greek names into Roman characters is better than another. Since however the essence of Mr Konstantinidis' complaint is that the ISO system produces an unacceptable degree of phonetic distortion when applied to his name, it is worth considering briefly what practical effects that system has. If the version of the ISO system that has been placed before the Court were used generally, there is no doubt that it would seriously distort the spelling of many Greek names. In numerous respects it is bizarre and inaccurate. For example, the Greek letter 'β', which in ancient times may well have represented a sound like the 'b' in the English word 'big', is in modern Greek pronounced like the 'v' in 'very'. But the ISO system insists that it should be rendered by a 'b'. The influence of perceived notions about the pronunciation of classical Greek is also to be seen in the proposed rendering of the vowels 'η' and 'υ', which in modern Greek are both pronounced like the vowel in the English word 'sheep'. Under the ISO system 'η' is to be rendered by 'e' (with a horizontal bar above it) and 'υ' by 'u'; the former might be phonetically accurate to an English speaker and the latter to a Welsh speaker, but neither conveys the value of the Greek letters to a German speaker. In addition, the ISO system disregards the fact that 'υ' is pronounced like an English 'v' or 'f' when preceded by 'α' or 'ε'. These are not the only defects.

The ISO system transliterates the Greek 'γ' by the Roman 'g', ignoring the fact that the hard 'γ' has a guttural quality and the soft 'γ' is pronounced like the 'y' in the English word 'yes'. The letter 'θ', which is pronounced like 'th' in the English 'thing', is to be rendered by a 't' with a horizontal bar above it. Of course it is difficult to indicate such a sound to a German speaker since it is absent from his language. But more conventional systems of transliteration write 'th' for 'θ', perhaps because those letters have the appropriate value in at least one major language (namely, English) and perhaps because German words derived from Greek words containing the letter 'θ' are spelt with a 'th' (e. g. Theologie). Other Greek consonants that are distorted by the ISO system are 'χ' (to be transliterated by an 'h', whereas a 'ch' would be more orthodox and more phonetic for a German speaker) and 'ψ', which represents the sound 'ps' as in the English word 'tips' but is transliterated according to the ISO system by a 'p' with a horizontal bar above it.

8. A good example of the distorting effect of the ISO system is provided by the name of Γιάννης Ψυχάρης (1854-1929; an extreme advocate of the use of demotic Greek). The name would normally be transliterated as 'Yannis Psycharis', but under the ISO system it would be rendered 'Giannés Puharés' [4] (assuming that acute accents are to be used in place of horizontal bars), which is by any standard misleading. Perhaps the most esoteric feature of the ISO system is the use of horizontal bars above certain letters. Such signs can have no meaning at all, except for a reader who is conversant with the ISO system, and certainly do not inform the uninitiated that 't' has a fricative quality or that 'p' is to be pronounced 'ps'. Moreover, many typewriters and word-processors are, as we have seen, incapable of reproducing such signs, which doubtless explains why the German authorities intend to register the applicant as 'Hréstos Kónstantinidés' with three acute accents not provided for in the ISO system. There must indeed be some doubt about the merits of a system of transliteration which uses diacritic signs that are beyond the technical capacities of ordinary writing equipment.

9. On the basis of the above remarks it is easy to conclude that, if the ISO system of transliteration is used in Germany (or indeed in any other Member State), many Greek names — including those of the applicant — will be written in a way that gives a highly misleading impression of their true pronunciation. In fact, some names will be distorted beyond recognition.

The alleged violation of the applicant's rights under Community law

10. Although the Amtsgericht Tübingen has referred two separate questions, it seems to me that in reality they amount to a single question: namely, whether a national of a Member State who has established himself as a self-employed person in another Member State, in which a different alphabet is used, is entitled by virtue of Articles 7 and 52 of the

4 — The 'P' in 'Puharés' has been written without an acute accent because the word-processors used at the Court are unable to place accents on capital letters.

Treaty, to oppose the transliteration of his names, for the purpose of entries in registers of civil status, in a manner that grossly misrepresents the pronunciation of those names.

11. Articles 48, 59 and 60 of the Treaty do not appear to be relevant in the present case, since the applicant is self-employed and permanently established in Germany. As such, his rights are determined by Article 52. It may in any event be noted that the position would be broadly similar if he were a worker covered by Article 48 or a provider of services covered by Article 59. There is not, in my view, any need to give separate consideration to Article 5; if the applicant is entitled to oppose the misspelling of his name under Articles 7 and 52, that right will be directly effective.

12. Written observations have been submitted by the Commission and by the German and Greek Governments, all of whom were in addition represented at the hearing. Mr Konstantinidis did not submit written observations, but he did give the Court a rare opportunity to hear a litigant in person when he represented himself at the hearing. His essential argument, presented with a simple eloquence and brevity which many professional advocates would do well to emulate, is that 'Hréstos Kónstantinidés' is an insulting, unpronounceable parody of his name, which is offensive to his religious sentiments. He also points out that, having been known to his clients as 'Christos Konstantinidis' for eight years, he must now suffer either the inconvenience of telling them that he has a new name or the confusion of using different names for different purposes.

13. Mr Konstantinidis is supported by the Commission and the Greek Government. The Commission considers that a person in Mr Konstantinidis' situation may be a victim of indirect discrimination, contrary to Articles 7 and 52, if he is required to use the distorted transliteration of his name in his professional life and thus has reason to fear a substantial loss of earnings and if he is likely to encounter administrative difficulties as a result of the different spelling of his name. The Commission also considers that Mr Konstantinidis' human rights may be infringed, if the compulsory use of the distorted transliteration adversely affects his right of free movement guaranteed by the Treaty.

14. The Greek Government strongly disapproves of the system of transliteration recommended by the ISO. It prefers another system developed by the Greek Standards Organization (ELOT 743), which is applied in Greece and has been adopted by NATO and the United Nations. It considers that the German authorities' insistence on using the ISO system manifestly infringes the rights enjoyed by individuals under Articles 7, 48, 52 and 59 of the Treaty.

15. The German Government contends that the object pursued by the Convention of 13 September 1973 and by the ISO system of transliteration is uniformity and legal certainty: they ensure that Greek names are spelt identically in all Member States and that transliterated Greek names can be converted back into Greek. The German Government points out that Greece has also acceded to the Convention of 13 September 1973. Whatever difference of treatment may be suffered by Greek nationals is objectively

justified, since it is necessary in order to render Greek names comprehensible in other countries.

16. At the hearing the German Government modified its position somewhat. Its representative referred to Article 2, first paragraph, of the aforesaid Convention of 13 September 1973, which provides as follows:

'Where an entry must be made in a register of civil status by an authority of a contracting State and there is presented for that purpose a copy of, or an extract from, an entry in a register of civil status or another document indicating the surnames and first names in the same characters as those of the language in which the entry is to be made, those surnames and first names shall be reproduced literally without alteration or translation.'

The German courts have always taken the view that the reference to 'another document' is limited to documents of civil status and does not include passports and identity cards. Thus the Amtsgericht Tübingen refuses to allow the applicant's name to be recorded in the marriage register in accordance with the Roman transcription used in his Greek passport. The German Government's representative informed the Court that on 11 September 1992 the General Assembly of the International Commission on Civil Status adopted a resolution according to which the reference, in Article 2 of the Convention of 13 September 1973, to another document indicating a person's name includes official documents such as passports. The German Government intends to issue instructions to its administrative officers requiring them, in effect, to comply with that resolution but is uncertain whether the German courts will accept that interpretation of the Convention. The German Government's representative concedes that there would be a breach of the Treaty if a national of another Member State whose name is written in Roman characters in his passport were compelled to accept a different spelling of his name.

17. In order to determine whether Community law entitles Mr Konstantinidis to object to the transliteration of his name in a particular way, it is necessary to examine: (a) whether he suffers discrimination on grounds of nationality of a type that is prohibited by Article 7 of the Treaty, in conjunction with Article 52 thereof; and (b) whether, even in the absence of any discrimination, his right of establishment under Article 52 of the Treaty is impaired, in particular because the treatment accorded to him is a breach of his fundamental rights protected by Community law.

(a) *The issue of discrimination*

18. On the question of discrimination it is necessary to consider (i) whether Greek nationals are treated differently from nationals of Germany or other Member States, (ii) whether such a difference of treatment falls within the scope of the Treaty, and (iii) whether it is objectively justified by a difference in the situation of Greek nationals and that of other nationals. I shall examine each of those points separately.

19. The Commission observes rightly that Mr Konstantinidis is not suffering direct (or overt) discrimination, since German law does

not expressly prescribe one form of treatment for Greek nationals and another for nationals of other Member States. Even if Mr Konstantinidis became a naturalized German, he would still have to have his name transliterated in exactly the same way. The Commission contends that Mr Konstantinidis may, however, be the victim of indirect (or covert) discrimination, inasmuch as the German rules requiring names written in non-Roman characters to be transliterated in a particular way are more likely to affect Greek nationals than nationals of Germany or any other Member State. It is of course well established that the Treaty rules prohibiting discrimination extend to covert, as well as overt, discrimination: Case 152/73 *Sotgiu* v *Deutsche Bundespost* [1974] ECR 153, at paragraph 11.

20. In my view, the practice of the German authorities is capable of resulting in covert discrimination against Greek nationals. The great majority of Greek nationals who go to live and work in Germany will, as holders of Greek birth certificates showing names written in Greek characters, have to endure the obligatory transliteration of their names according to a system which takes no account of their wishes in the matter and which may result in an objectionable degree of distortion. Very few nationals of any other Member State, including Germany, will be affected by the German rules on obligatory transliteration, because their names will have been recorded from birth in Roman characters. Hence, Greek nationals are in practice treated differently from nationals of other Member States.

21. There cannot be any doubt that the difference in treatment identified above falls in principle within the scope of application of the Treaty, as required in order for the prohibition laid down in Article 7 to operate. A person who goes to another Member State in the exercise of the rights conferred on him by the free movement provisions of Articles 48 to 66 of the Treaty is 'in a situation governed by Community law' and as such must 'be placed on a completely equal footing with nationals of the Member State': Case 186/87 *Cowan* v *Trésor Public* [1989] ECR 195, at paragraph 10. The fact that the rules governing the writing of names in public registers are in principle a matter for national law rather than Community law does not of course mean that any discrimination in those rules is removed from the ambit of the Treaty. That much is clear from paragraph 19 of the *Cowan* judgment.

22. It might be argued that some differences in treatment, especially the accidental differences that lead to covert discrimination, are not sufficiently serious to be caught by the prohibitions laid down by the Treaty. The Commission seems to suggest that the discrimination suffered by Greek nationals in the present case is only prohibited if it results in some tangible disadvantage for the person concerned, such as for example might be the case if he were required to use the undesirable spelling of his name for commercial or professional purposes and lost income as a result of the ensuing damage to his prestige or if he suffered difficulties of an administrative nature.

23. It is not clear whether Mr Konstantinidis is obliged to use the distorted spelling for business and social purposes and in his

ordinary dealings with the German authorities or whether it is mandatory only in the marriage register and similar documents. Certainly, if Mr Konstantinidis were to suffer financial loss as a result of being forced to trade under a distorted version of his name, there would be no case for arguing that the matters complained of by him are so trivial and insignificant as to lie outside the concern of Community law.

24. But I do not think that actual damage of a tangible nature need be proved in order to bring into operation the prohibition of discrimination. Community law does not regard the migrant worker (or the self-employed migrant) purely as an economic agent and a factor of production entitled to the same salary and working conditions as nationals of the host State; it regards him as a human being who is entitled to live in that State 'in freedom and dignity' (see the fifth recital in the preamble to Regulation No 1612/68 on freedom of movement for workers within the Community; OJ, English Special Edition, 1968 (II), p. 475) and to be spared any difference in treatment that would render his life less comfortable, physically or psychologically, than the lives of the native population. There is support for that proposition in the case-law of the Court. For example, in Case 137/84 *Ministère Public* v *Mutsch* [1985] ECR 2681 the Court held that a migrant worker who was prosecuted before a criminal court must have the same rights, as regards the use of languages, as a national of the host State.

25. If Mr Konstantinidis is compelled to call himself 'Hréstos Kónstantinidés' when dealing with the German authorities, with his clients or with firms from which he himself buys goods or services (for example, when he insures his car or opens a bank account), then I should say that, even without proof of actual financial loss, the inconvenience and unpleasantness thus inflicted on him are sufficient to entitle him to invoke the prohibitions laid down by the Treaty.

26. It may be that Mr Konstantinidis is not legally compelled to use the objectionable spelling of his name in his social and professional life and that it is only required on certificates of civil status (birth, marriage, death, etc.). It might be argued that, if that is the case (and the position is not, as I have observed, entirely clear) and the unwanted spelling need only exist in the dusty archives of the State or on copies of certificates that can lie buried at the bottom of a drawer, then there is nothing to complain of. I do not agree. Birth, marriage and death are the most significant and sacred events in a person's existence. The entries made in official registers to record such events and the corresponding certificates issued to the person concerned are of such obvious importance that the migrant worker should be entitled to demand that he, like any citizen of the host country, be properly identified in those documents and have his name written in a manner that is not insulting and offensive to him. From a purely practical viewpoint, it should in any event be noted that, even if Mr Konstantinidis is legally free to write his name as he pleases for social and professional purposes, he would inevitably feel some pressure to use the spelling prescribed for official documents; discrepancies between those

documents and his everyday practice, regarding the spelling of his name, might cause him inconvenience and embarrassment and would be a source of unnecessary confusion for all concerned. At the hearing Mr Konstantinidis argued convincingly that he would suffer great discomfort if he were forced to adopt two different identities: one for official use in his dealings with the German State and another for use in his social and professional life.

27. Thus I conclude that ultimately it does not matter whether the distorted spelling of Mr Konstantinidis' name is required only in official documents or whether he is also obliged to use it for the purposes of social and commercial intercourse or whether he sustains financial loss as a result. Even as regards entries in official registers he is entitled to the same treatment as German nationals, unless there is objective justification for treating him differently.

28. The German Government, which concedes that Greek nationals are treated differently from nationals of other Member States, in so far as only the names of the former undergo transliteration, contends that the difference in treatment is objectively justified because it is necessary in order to make Greek names legible in non-Greek-speaking countries. I do not agree with that argument. Obviously, there is every justification for requiring the names of Greek migrant workers to be written in Roman characters in the 11 Member States that do not use the Greek alphabet. If they were not so written, they would be incomprehensible to most of the officials and citizens of the host State. But that does not mean that there is objective justification for writing Greek names in a manner that is unphonetic, illogical, arbitrary, inconsistent with long-established practice and offensive to the persons concerned.

29. The German Government makes no attempt to defend the merits of the ISO system of transliteration. Instead, it seeks to justify the use of that system on the ground that it is prescribed by an international convention (to which Greece has also adhered) and thus ensures consistency and uniformity, inasmuch as Greek names will be written in the same way in all the contracting States. There are several defects in that argument. In the first place, it is questionable whether uniformity is necessary or desirable. The German Government does not state what problems would be caused if the transliteration of Greek names were allowed to vary from country to country, in accordance with the different phonetic values attributed to the Roman characters. There is no suggestion that fiscal and social security fraud, or criminal activity in general, would be greatly facilitated. Secondly, the Convention in question does not in fact achieve uniformity since only seven States (including five Member States) have adhered to it. [5] Thirdly, even if uniformity were desirable, it is difficult to see what justification there could be for achieving it by means of a system of transliteration that produces serious phonetic distortion, irrespective of the target language. It is doubtful whether there is any language in the world in which names written 'Hréstos' and 'Puharés' would be pronounced in a manner remotely resembling the Greek names Χρστος (Christos) and Ψυχάρης (Psycharis).

5 — The States in question are Austria, Germany, Greece, Italy, Luxembourg, the Netherlands and Turkey; see Bowman and Harris, *Multilateral Treaties, Index and Current Status*, 1984, p. 378 (sixth cumulative supplement, 1989).

30. Finally, I do not think that matters are changed much by Greece's having adhered to the Convention of 13 September 1973. It is perhaps strange that the Greek Government is now objecting to the use of a system of transliteration which is prescribed, indirectly, by a Convention to which it is itself a party. One possible explanation is that, when the Greek Government acceded to the Convention on 19 March 1987, it did not know that the ISO would later adopt a transliteration system of which it strongly disapproves. In any event, it is clear that if Mr Konstantinidis is entitled under Community law to object to the misspelling of his name, such a right cannot be taken away from him by the Convention of 13 September 1973 or by Greece's accession to that Convention in 1987.

(b) *The issue of fundamental rights*

31. Since it follows from what I have said above that this case may be disposed of on the basis of discrimination, it is not in my view strictly necessary to deal with the issue of fundamental rights. Since, however, the issue has been raised and is of general importance, I shall examine it in some detail.

32. The Amtsgericht Tübingen observes in its Order for Reference that the attitude of the German authorities towards Mr Konstantinidis might infringe his general right of personal identity. That is presumably a reference to Article 2 of the Grundgesetz (the German Constitution), which provides that everyone has the right to develop his personality in so far as he does not infringe the rights of others and does not act in breach of the constitutional order or public morality. The German court may also be thinking of Article 1, paragraph 1, of the Grundgesetz, which states that the dignity of the individual is inviolable and must be protected by all organs of the State.

33. The Commission refers expressly to Article 2 of the Grundgesetz and also to Articles 5 and 8 of the European Convention on Human Rights. Article 5 grants the right to liberty and security, while under Article 8 everyone is entitled to respect for his private and family life, his home and his correspondence. The Commission considers that a requirement to spell one's name in a particular way may in certain circumstances infringe fundamental rights protected by Community law. In particular, that would be the case if such a requirement affected the right to free movement guaranteed by the Treaty.

34. In my view, two questions need to be considered. First, it is necessary to decide whether the treatment of Mr Konstantinidis, as regards the spelling of his name, is contrary to the European Convention on Human Rights or to any other human rights instrument or constitutional principle, the observance of which the Court must ensure within the sphere of Community law. If that is the case, it will be necessary to determine secondly whether the mere fact that Mr Konstantinidis is exercising his freedom of establishment under Article 52 of the Treaty is sufficient to bring the case within the sphere of Community law for these purposes, i. e. whether Member States are required, as a matter of Community law, to

respect the fundamental rights of persons who exercise their rights of free movement under the Treaty.

35. The European Convention on Human Rights does not contain any provision which expressly affirms the individual's right to his name and personal identity. In that respect it is in marked contrast to the American Convention on Human Rights, which provides in Article 18 that 'Every person has the right to a given name and to the surnames of his parents or that of one of them.' That instrument does not of course form part of the Community legal order. One instrument which the Court has sometimes been willing to draw on as a source of fundamental rights is the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly in 1966. The Covenant, which has been ratified by all the Member States except Greece, was mentioned by the Court in its judgments in Case 374/87 *Orkem* v *Commission* [1989] ECR 3283, paragraph 31, and Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraph 68. Article 24(2) of the Covenant states that 'Every child shall be registered immediately after birth and shall have a name.' It might well be possible to infer from that provision that if human beings are entitled to be given a name on birth they are entitled to keep that name throughout their lives and to object to unjustified changes in its orthography.

36. More surprising than the omission, from the European Convention on Human Rights, of a specific reference to the individual's right to his name and personal identity is the absence of a general provision recognizing the individual's right to be treated with respect for his dignity and moral integrity (apart from the prohibition in Article 3 of 'degrading treatment' which, in its context, was no doubt intended to be of more limited scope). To some extent, that omission is repaired by provisions in the Constitutions of many Member States, including, as we have seen, the German Grundgesetz.

37. Under Article 10(1) of the Spanish Constitution the dignity of the individual and the free development of his personality *inter alia* are the foundations of the political order and social peace. Article 15 grants everyone the right to life and physical and moral integrity, while Article 18 guarantees the right to honour, personal and family privacy and the individual's image. In Portugal Article 25 of the Constitution states that the moral and physical integrity of persons is inviolable, while Article 26(1) grants everyone the right to *inter alia* his personal identity, good name and reputation, image and privacy. Under Article 2 of the Greek Constitution respect for, and protection of, the value of the human being constitute the primary obligation of the State. Article 5 grants every person the right to develop freely his personality. In Ireland Article 40.1 of the Constitution states that all citizens shall, as human persons, be held equal before the law. Under Article 40.3.1 the State guarantees to respect the personal rights of the citizen, while Article 40.3.2 requires the State to protect in particular the life, person, good name and property rights of every citizen. Article 40.3 is not confined to the specific rights set out there, but may be extended to all rights which 'result from the Christian and democratic nature of the State': *Ryan* v *Attorney General* 1965 IR 294, per Kenny J. In Italy

Article 3 of the Constitution grants all citizens 'equal social dignity' and Article 22 provides that no one may, for political reasons, be deprived of his legal capacity, citizenship or name.

38. The last example is of particular interest because it is, so far as I know, the only constitutional provision in a Member State which expressly prohibits the State from depriving a citizen of his name. The explanation for such a prohibition is that in the fascist period of Italian history certain ethnic minorities were forced to italianize their names (see U. de Siervo, in *Commentario della Costituzione*, edited by G. Branca, Rapporti Civili, Arts 22 and 23, 1978, p. 20). At first sight the words 'for political reasons' might suggest that citizens may be deprived of their names for 'non-political' reasons. However, it has been suggested that that is not the case and that the *jus nominis* guaranteed by the Italian Constitution is an absolute right not subject to any limitations. (V. Falzone, F. Palermo and F. Cosentino, *La Costituzione della Repubblica Italiana*, 1969, p. 87).

39. It is possible to infer from the above provisions in particular, and from the constitutional traditions of the Member States in general, the existence of a principle according to which the State must respect not only the physical well-being of the individual but also his dignity, moral integrity and sense of personal identity. I do not think there can be any doubt that those 'moral rights' are violated if a State compels someone to abandon or modify his name, unless at any rate it does so for a very good reason. (For example, if the name, when used for commercial purposes, creates confusion with the goods of another trader it may be legitimate to restrict the use of the name for those purposes.)

40. A person's right to his name is fundamental in every sense of the word. After all, what are we without our name? It is our name that distinguishes each of us from the rest of humanity. It is our name that gives us a sense of identity, dignity and self-esteem. To strip a person of his rightful name is the ultimate degradation, as is evidenced by the common practice of repressive penal regimes which consists in substituting a number for the prisoner's name. In the case of Mr Konstantinidis the violation of his moral rights, if he is compelled to bear the name 'Hréstos' instead of 'Christos', is particularly great; not only is his ethnic origin disguised, since 'Hréstos' does not look or sound like a Greek name and has a vaguely Slavonic flavour, but in addition his religious sentiments are offended, since the Christian character of his name is destroyed. At the hearing Mr Konstantinidis pointed out that he owes his name to his date of birth (25 December), Christos being the Greek name for the founder of the Christian — not 'Hréstian' — religion.

41. In view of the above considerations I do not think that it would be right to say that the German authorities' treatment of Mr Konstantinidis is necessarily consistent with the European Convention on Human Rights simply because the Convention does not contain express provisions recognizing the individual's right to his name or protecting

his moral integrity. On the contrary, I consider that it ought to be possible, by means of a broad interpretation of Article 8 of the Convention, to arrive at the view that the Convention does indeed protect the individual's right to oppose unjustified interference with his name.

42. The more difficult question is to determine whether a person who exercises his right of free movement under Articles 48, 52 or 59 of the Treaty is entitled, as a matter of Community law, to object to treatment which constitutes a breach of his fundamental rights. On that point the Court's case-law has developed considerably in recent years. The most complete statement of the present position is contained in the judgment in Case C-260/89 *ERT* [1991] ECR I-2925, where the Court said:

'41. With regard to Article 10 of the European Convention on Human Rights, referred to in the ninth and tenth questions, it must first be pointed out that, as the Court has consistently held, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. For that purpose the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories (see, in particular, the judgment in Case C-4/73 *Nold* v *Commission* [1974] ECR 491, paragraph 13). The European Convention on Human Rights has special significance in that respect (see in particular Case C-222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 18). It follows that, as the Court held in its judgment in Case C-5/88 *Wachauf* v *Federal Republic of Germany* [1989] ECR 2609, paragraph 19, the Community cannot accept measures which are incompatible with observance of the human rights thus recognized and guaranteed.

42. As the Court has held (see the judgment in Joined Cases C-60 and C-61/84 *Cinéthèque* v *Fédération Nationale des Cinémas Français* [1985] ECR 2605, paragraph 25, and the judgment in Case C-12/86 *Demirel* v *Stadt Schwäbisch Gmund* [1987] ECR 3719, paragraph 28), it has no power to examine the compatibility with the European Convention on Human Rights of national rules which do not fall within the scope of Community law. On the other hand, where such rules do fall within the scope of Community law, and reference is made to the Court for a preliminary ruling, it must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with the fundamental rights the observance of which the Court ensures and which derive in particular from the European Convention on Human Rights.

43. In particular, where a Member State relies on the combined provisions of Articles 56 and 66 in order to justify rules which are likely to obstruct the exercise of the freedom to provide services, such justification, provided for by Community law, must be interpreted in the light of the general principles of law and in particular of fundamental rights. Thus the national rules in question can fall under the exceptions provided for by the combined provisions of Articles 56 and 66 only if they are compatible with the fundamental rights the observance of which is ensured by the Court.

44. It follows that in such a case it is for the national court, and if necessary, the Court of Justice to appraise the application of those provisions having regard to all the rules of Community law, including freedom of expression, as embodied in Article 10 of the European Convention on Human Rights, as a general principle of law the observance of which is ensured by the Court.'

43. That judgment does not establish clearly, one way or the other, whether Mr Konstantinidis may, as a matter of Community law, invoke the protection of his fundamental rights in the circumstances of the present case. The following points may be noted.

44. First, it cannot be said that the regulations at issue in this case lie entirely outside the scope of Community law since they are, when applied to migrant workers, capable of having a particularly adverse effect on the nationals of one Member State. Secondly, there are now at least two situations in which Community law requires national legislation to be tested for compliance with fundamental rights: namely (a) when the national legislation implements Community law (paragraph 19 of the *Wachauf* judgment) and (b) when a Treaty provision derogating from the principle of free movement is invoked in order to justify a restriction on free movement (paragraph 43 of the *ERT* judgment). Thus it is clear that if, as I have suggested, the German authorities' treatment of Mr Konstantinidis constitutes discrimination prohibited by Articles 7 and 52 of the Treaty, there can be no question of its being justified on grounds of public policy under Article 56(1) if it infringes his fundamental rights.

45. But let us suppose that the view is taken that the German authorities' treatment of Mr Konstantinidis is *not* discriminatory. Does that mean that it cannot be contrary to Article 52, even though it infringes Mr Konstantinidis' fundamental rights? The implications of that question are perhaps easier to see if a more dramatic example is considered. Suppose that a Member State introduces a draconian penal code under which theft is punishable by amputation of the right hand. A national of another Member State goes to that country in exercise of the rights of free movement conferred on him by Article 48 et seq. of the Treaty, steals a loaf of bread and is sentenced to have his right hand cut off. Such a penalty would undoubtedly constitute inhuman and degrading punishment contrary to Article 3 of the European Convention on Human Rights. But would it also be a breach of the individual's rights under Community law, even though it were applied in a non-discriminatory manner? I believe that it would.

46. In my opinion, a Community national who goes to another Member State as a worker or self-employed person under Articles 48, 52 or 59 of the Treaty is entitled not just to pursue his trade or profession and to enjoy the same living and working conditions as nationals of the host State; he is in addition entitled to assume that, wherever he goes to earn his living in the European

Community, he will be treated in accordance with a common code of fundamental values, in particular those laid down in the European Convention on Human Rights. In other words, he is entitled to say 'civis europeus sum' and to invoke that status in order to oppose any violation of his fundamental rights.

47. Three arguments might be advanced to counter that proposition: first, that it would be inconsistent with the Court's existing case-law, according to which Article 52 has generally been understood as nothing more than a prohibition of discrimination against nationals of other Member States (see, for example, P. Troberg, in *Kommentar zum EWG-Vertrag*, by Von der Groeben, Thiesing and Ehlermann (Editors), 4th edition, 1991, paragraphs 37 and 38 on Article 52, p. 952 et seq.); second, that it would lead to 'reverse' discrimination against nationals of the host State; third, that it would create an overlap between the jurisdiction of the Court of Justice and that of the European Court of Human Rights, with the possibility of conflicting decisions. None of those arguments is convincing.

48. As regards the first argument, although most of the cases in which the Court has recognized a breach of Article 52 concerned discriminatory measures, I do not think that the case-law should be read as establishing that a measure can never be contrary to Article 52 simply because it is non-discriminatory (see on the one hand the comments of Advocate General Lenz in Case 221/85 *Commission* v *Belgium* [1987] ECR 719, at p. 730 et seq, and on the other hand the comments of Advocate General Van Gerven in Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, at page 2370, paragraph 10). It is perhaps not unreasonable that, as regards technical obstacles to freedom of establishment, a person who moves to another Member State should in general have to comply with the local legislation (e. g. a rule that restaurateurs should have several years' experience in the catering trade), though I question whether, even on a technical level, a disproportionate restriction or one entirely devoid of justification could be applied against a national of another Member State (see the judgment in Case C-351/90 *Commission* v *Luxembourg* [1992] ECR I-3945, at paragraph 14). But when a breach of fundamental rights is in issue, I do not see how the non-discriminatory nature of the measure can take it outside the scope of Article 52. Indeed, the proposition that a Member State may violate the fundamental rights of nationals of other Member States, provided that it treats its own nationals in the same way, is untenable.

49. As regards the second argument, I do not think that the danger of reverse discrimination can be a valid argument for limiting the scope of the rights conferred by the Treaty on persons who seek their livelihood in another Member State. The notion that the free movement provisions of the Treaty merely prohibit discriminatory measures was abandoned long since in relation to goods (in the 'Cassis de Dijon' judgment; Case 120/78 *Rewe* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649) and more recently in relation to the provision of services (Case C-76/90 *Säger* v *Dennemeyer* [1991] ECR I-4221, paragraph 12). Once it is

accepted that the Treaty requires more than the abolition of discrimination, it follows *ex hypothesi* that a Member State may in certain circumstances be obliged to treat producers or workers from other Member States more favourably than it treats its own producers and workers.

50. As regards the third argument, the danger of an overlap between the jurisdiction of the Court of Justice and the European Court of Human Rights would not in fact be great. The latter has always stressed that its jurisdiction is subsidiary, in the sense that it is primarily for the national authorities and the national courts to apply the Convention (see especially the judgment of that court of 23 July 1968 on the merits of the 'Belgian Linguistic' case, Series A No 6, p. 35, § 10 *in fine*, the *Handyside* judgment of 7 December 1976, Series A No 24, p. 22, § 48 and the *Eckle* judgment of 15 July 1982, Series A No 51, pp. 30-31, § 66 *in fine*). In any event, applicants must first, under Article 26 of the Convention, exhaust the remedies available under domestic law, which includes of course the possibility of a reference for a preliminary ruling under Article 177 of the Treaty. Thus, if the Court of Justice were to extend the circumstances in which the Convention may be invoked under Community law, the result would simply be to increase the likelihood of a remedy being found under domestic law, without the need for an application to the organs established by the Convention.

51. As for the possibility of conflicting rulings on the interpretation of the Convention, that has existed ever since the Court of Justice recognized that the Convention may be invoked under Community law. Such a possibility does not seem to have caused serious problems. It would in any event be paradoxical if the existence of the Convention and the system established under the Convention were to reduce the protection available in national law or in Community law.

Conclusion

52. I am accordingly of the opinion that the questions referred to the Court by the Amtsgericht Tübingen should be answered as follows:

Where a national of a Member State establishes himself, pursuant to Article 52 of the EEC Treaty, in another Member State which uses an alphabet different from the one used in his own State, Articles 7 and 52 of the Treaty are infringed by rules or practices of the host State which require his name to be entered in a register of civil status, against his wishes, in a transliteration which, as in circumstances such as those of the present case, seriously misrepresents the correct pronunciation of the name.