

Press and Information Division

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Opinion of Advocate General Francis Jacobs in Case C-148/02

Carlos Garcia Avello v Belgium

IN THE OPINION OF THE ADVOCATE GENERAL A REFUSAL TO REGISTER A CHILD OF DUAL NATIONALITY WITH THE SURNAME OF BOTH PARENTS FOLLOWING THE SPANISH TRADITION CONSTITUTES DISCRIMINATION ON GROUNDS OF NATIONALITY PROHIBITED BY COMMUNITY LAW.

He considers that such a refusal cannot be justified by reference to an overriding public interest that each person in the same State derives their surname in the same manner.

Carlos Garcia Avello, a Spanish national, and his Belgian wife, Isabelle Weber, reside in Belgium and have two children. The children have dual nationality. Belgian law requires children to take the surname of their father. On their birth certificates, therefore, the children were registered with the name Garcia Avello. Spanish custom is for children to take the first surname of each of their parents placing their father's first and their mother's second. In line with this custom the parents requested the Belgian authorities to change the surname of their children from Garcia Avello to Garcia Weber. They argued that the current name of the children could lead Spanish people to believe that the children are in fact his siblings and there is no connection with the mother of the children. Moreover, practical difficulties could arise from the children effectively having differing surnames in Belgium and in Spain.

This application was refused as contrary to Belgian practice. Mr Garcia Avello challenged that refusal before the Belgian Conseil d'Etat; that court subsequently referred a question to the Court of Justice of the EC as to whether the refusal was contrary to Community law, in particular the principles relating to citizenship of the European Union and the freedom of movement for citizens.

Advocate General Jacobs delivers his Opinion in this case today.

The view of the Advocate General is not binding on the Court of Justice. The task of an Advocate General is to propose to the Court, in complete independence, a legal solution to a case.

Firstly, the Advocate General notes that every Member State has its own rules relating to the transmission of surnames from one generation to the next.

Advocate General Jacobs considers that **the situation falls within the scope of Community law**. Whilst it is true that Community law on citizenship and freedom of movement does not apply to cases between a State and its own nationals, the Advocate General believes that the case, concerns not only the children, who are Belgian nationals, but also Mr Garcia Avello, a Spanish national who has exercised his Community right to move to and work in another Member State. The refusal concerns Mr Garcia Avello, as the person who instituted legal proceedings, and the issue, being the transmission of surnames from one generation to the next, is of importance to both generations. Moreover the Advocate General notes that, whilst the children are Belgian nationals, they also have Spanish nationality, a fact which is inseparable from their father's exercise of his right to free movement.

Advocate General Jacobs considers that following the introduction of Community citizenship, **discrimination on grounds of nationality is clearly prohibited in all situations where Community law is applicable** and that there is no need to establish a specific interference with a specific economic freedom. The Advocate General notes that it must then be established whether the refusal by the Belgian authorities discriminates on grounds of nationality and whether this discrimination can be justified.

The Advocate General states that **the refusal amounts to discrimination on grounds of nationality**, prohibited by Community law, as it treats **objectively different situations in the same way**. In the opinion of Advocate General Jacobs, as a change of surname is allowed under Belgian law when serious grounds are given for the application, a systematic refusal to grant a change when the grounds given are linked to or inseparable from the possession of another nationality, must be regarded as discriminating on grounds of nationality. This practice accords the same treatment both to those who, as a result of possessing a nationality other than Belgian, bear a surname or who have a parent whose surname was not formed in accordance with Belgian rules and to those who possess only Belgian nationality and bear a surname formed according to those rules, despite the fact that their situations are objectively different.

Advocate General Jacobs considers that **this discrimination cannot be justified** as there is no overriding public interest that one particular pattern of surname transmission should always prevail for the citizens of a Member State within its territory. He notes that whilst the aim of preventing confusion over identity by limiting the right to change surnames is a legitimate one, the dangers should not be exaggerated and that official registration of a change of name will reduce the chance of confusion. Finally Advocate General Jacobs states that the concept of free movement is not based on the notion of a single move to one Member State followed by integration into that State, but rather on the possibility to move repeatedly, or even continually within the Union. As such it cannot be argued that the principle of non-discrimination seeks to ensure the integration of migrant citizens in their host State.

Note: *After delivery of the Advocate General's Opinion, the judges of the Court of Justice of the EC begin their deliberation on the judgment, which they will deliver at a later date.*

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at approximately 3 pm today.

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