

**Christos Konstantinidis v. Stadt Altensteig-Standesamt  
and Another  
(Case C-168/91)**

**Before the Court of Justice of the European  
Communities (6th Chamber)**

**ECJ (6th Chamber)**

**(Presiding, Kakouris P.C.; Mancini, Schockweiler, Díez  
de Velasco and Kapteyn  
JJ.) Mr. Francis Jacobs, Advocate General.**

**30 March 1993 [FN1]**

Reference from Germany by the Amtsgericht (District Court) Tübingen under  
Article 177 EEC.

Provision considered:  
EEC 52

**Identity documents. Civil status. Foreign names. Transliteration.**

There is nothing in the EEC Treaty to prevent the transliteration of a Greek name into Latin characters in the registers of civil status of a member-State which uses the Latin alphabet. It is for the member-State concerned to lay down the procedure for doing so. Such rules will only be in breach of Article 52 EEC in so far as their application creates for the Greek national such a constraint that it actually interferes with the unfettered exercise of the right of establishment under that **Article**. [14]-[15]

FN1 The judgment in this case has been translated by us. The English wording of the questions put by the national court and of the European Court's ruling is, however, taken from the English text published in the Official Journal. The Advocate General's Opinion was in English in the original.--Ed.

**Identity documents. Civil status. Foreign names. Transliteration.**

If the national law of the member-State of establishment obliges a Greek national covered by **Article 52** EEC to use for his job a Latin spelling of his name in the

registers of civil status which \*402 results from transliteration of the original Greek in a manner which misrepresents its pronunciation and thereby exposes him to a risk of confusion of identity on the part of potential clients, there is an interference with his right of establishment and so a breach of **Article 52**. [15]-[16]

The Court *interpreted Article 52 EEC in the context of a Greek national, << chi >>*

who was working self-employed in Germany and whose name was misspelled as 'Konstadinidis' (instead of 'Konstantinidis', as correctly represents the Greek and was moreover the Latin spelling in his passport) in the marriage register when he married there, who applied for rectification but had the mortification to find that when a certified translation was made of his passport, using the transliteration rules in ISO-18, as required by German law, his name emerged as Hréstos Kónstantinidés (in fact the ISO standard gave Hréstos Kōnstantinidēs, but German typewriters/word-processors presumably could not cope with the superior dashes), *to the effect that* Community law did not apply to transliteration rules for civil status registers as such, but *that* if use of the rules interfered with the right of establishment they could infringe **Article 52 EEC**, *that* an eccentric transliteration which misrepresented the pronunciation of K's name did so interfere with K's right of establishment, and so *that Article 52* prevented K being forced to use for his work the Latin spelling of his name foisted upon him. The ruling does not imply that the marriage register would have to be rectified, being restricted to the use of the name for work purposes. However that may well be the practical effect.

## Representation

Ernst Röder, Ministerialrat in the Federal Ministry of Finance, and Claus-Dieter Quassowski, Regierungsdirektor in the same Ministry, for the German Government as *amicus curiae*.

D. Raptis, State Legal Adviser, for the Greek Government as *amicus curiae*.

D. Gouloussis, Legal Adviser to the Commission, for the E.C. Commission as *amicus curiae*.

The following case was referred to in the judgment:

1. [Steinhauser v. City of Biarritz \(197/84\), 18 June 1985: \[1985\] E.C.R. 1820, \[1986\] 1 C.M.L.R. 53. Gaz:197/84](#)

The following further cases were referred to by the Advocate General:

2. [Sotgiu v. Deutsche Bundespost \(152/73\), 12 February 1974: \[1974\] E.C.R. 153. Gaz:152/73](#)

3. [Cowan v. Tresor Public \(186/87\), 2 February 1989: \[1989\] E.C.R. 195, \[1990\] 2 C.M.L.R. 613. Gaz:186/87](#)

4. [Ministere Public v. Mutsch \(137/84\)](#), 11 July 1985: [1985] E.C.R. 2681, [1986] 1 C.M.L.R. 648. [Gaz:137/84](#)
5. [Orkem SA v. E.C. Commission \(C-374/87\)](#), 18 October 1989: [1989] E.C.R. 3283, [1991] 4 C.M.L.R. 502. [Gaz:374/87](#) \*403
6. [Dzodzi \(C-297/88 & 197/89\)](#), 18 October 1990: [1990] I E.C.R. 3763. [Gaz:297/88](#)
7. [Ryan v. Attorney General \(Irish H.C.\)](#), [1965] I.R. 294
8. [Elliniki Radiofonia-Tileorasi AE \(Ert\) v. Pliroforisis \(C-260/89\)](#), 18 June 1991: [1991] I E.C.R. 2925. [Gaz:260/89](#)
9. [Wachauf v. State \(Bundesamt für Ernährung und Forstwirtschaft\) \(5/88\)](#), 13 July 1989: [1989] E.C.R. 2609, [1991] 1 C.M.L.R. 328. [Gaz:5/88](#)
10. [Re Biological Laboratories: E.C. Commission v. Belgium \(221/85\)](#), 12 February 1987: [1987] E.C.R. 719, [1988] 1 C.M.L.R. 620. [Gaz:221/85](#)
11. [Vlassopoulou v. Minister für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg \(C-340/89\)](#), 7 May 1991: [1991] I E.C.R. 2357, [1993] 2 C.M.L.R. 221. [Gaz:340/89](#)
12. [Re Access to Medical Professions: E.C. Commission v. Luxembourg \(C-351/90\)](#), 16 June 1992: [1992] 3 C.M.L.R. 124. [Gaz:351/90](#)
13. [Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein \('Cassis de Dijon'\) \(120/78\)](#), 20 February 1979: [1979] E.C.R. 649, [1979] 3 C.M.L.R. 494. [Gaz:120/78](#)
14. [Säger v. Dennemeyer \(C-76/90\)](#), 25 July 1991: [1991] I E.C.R. 4221. [Gaz:76/90](#)
15. [Belgian Linguistic Case \(No. 2\) \(ECHR--A/6\)](#), 23 July 1968: 1 E.H.R.R. 252
16. [Handyside v. United Kingdom \(ECHR--A/24\)](#), 7 December 1976: 1 E.H.R.R. 737
17. [Eckle v. Germany \(ECHR--A/51\)](#), 15 July 1982: 5 E.H.R.R. 1

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## **Facts**

### *1. Legal background*

The Convention on the Representation of Names and Surnames in Registers of Civil Status of 13 September 1973 [FN2] ('the Convention') sets out rules for the writing of names. It came into force in Germany on 16 February 1977. [FN3] Greece acceded to the Convention in 1987. The Convention was ratified by Act 1655/1986 with effect on 18 April 1987. [FN4]

FN2 [1976] II BGB1. 1473.

FN3 [1977] II BGB1. 254.

FN4 Official Journal of the Hellenic Republic Part 1, 183.

\*404 Article 1 of the Convention provides that:

This Convention shall apply to the representation of names and surnames in registers of civil status of any person irrespective of his or her nationality. It shall not affect the application of legal rules in force in the Contracting States concerning the determination of names and surnames.

Article 2 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. Diacritic signs forming part of such first names and surnames shall also be reproduced even if such signs do not exist in the language in which the entry is to be made.

Where first names and surnames are written in characters other than those of the language in which the entry is to be made, Article 3 provides that 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 Organisation for Standardisation (ISO) exist, those rules shall be applied.

In Germany, regulation 49(2) of the Official Regulations for Registrars of Civil Status and their Supervisory Authorities ('Dienstanweisung für die Landesbeamten und ihre Aufsichts-behörden') requires the Convention to be applied to registrars of civil status.

### *The main action*

The person concerned is a Greek national living in Altensteig, Germany, where he works as a self-employed masseur and assistant hydrotherapist.

On 1 July 1983 he married at the Altensteig registry office. His surname was entered in the marriage register as 'Konstadinidis.' A copy of the abovementioned register shows that he proved his identity by his passport. The newly married couple signed the register with the name 'Konstadinidis.'

According to a copy of his birth certificate of 1 November 1980, dated 31 May 1983 by the Greek Consulate in Stuttgart, the first name and surname in Latin characters are 'Christos Konstadinidis.' A copy of the birth certificate of 12 April 1990, dated 19 June 1990 by the same Consulate, gives the name 'Christos Konstantinidis.' According to his Greek passport (date of issue 26 April 1988), the transcription of his first name and surname in Latin characters is ' Christos Konstantinidis.'

On 31 October 1990 the plaintiff applied to the Altensteig registry office to rectify his surname in the marriage register from 'Konstadinidis' to ' Konstantinidis.'

\*405 As the name in the marriage register must correspond to the name shown in the birth certificate, the Amtsgericht Tübingen, which has jurisdiction for such rectification, obtained a translation of the birth certificate. By applying standard

ISO-18, which is prescribed by the Convention and which provides for transliteration, the Latin transcription of the name becomes 'Hrestos Konstantinides.'

The plaintiff lodged an appeal against this transcription on the ground that it misrepresents the pronunciation of his name.

The Landratsamt Calw, the supervisory authority for the registrar of civil status, Altensteig, asked in turn for rectification of the marriage register so that the name be shown as 'Hrestos Konstantinides' in conformity with standard ISO-18.

The Amtsgericht Tübingen took the view that the dispute raised problems of the interpretation and application of Community law and decided to refer the following questions to the Court:

1. Is it an encroachment, contrary to Articles 5 and 7 EEC, 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.* EEC 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?

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 EEC?

### **Opinion of the Advocate General (Mr. Francis Jacobs)**

The Amtsgericht Tübingen has asked the Court to give a preliminary ruling on the interpretation of Articles 5, 7, 48, 52, 59 and 60 EEC 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.

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 <<chi>><<rho>><<eta>><<sigma>><<tau>><<omicron>><<zeta>> and his surname is <<KAPPA>><<

omega>><<nu>><<sigma>><<tau>>α<<nu>><<tau>><<iota>><<nu>><<iota>> ð<<eta>><< zeta>>. 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.

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 (District Office) Calw, 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 Organisation for Standardisation (ISO) [FN5] 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 [FN6]).

FN5 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.

FN6 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.

\*406 The Amtsgericht Tübingen considers that, as a matter of German law, the applicant's name must be recorded in the marriage register as Hrésotos Kónstantinidéas, 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. [FN7] 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 \*407 names shall, without translation, be reproduced by means of transliteration in so far as is possible.

FN7 [1976] II BGB1. 1473.

If rules recommended by the International Organisation for Standardisation (ISO) exist, those rules shall be applied. [FN8]

FN8 Translated from the French. There does not appear to be an official English version of this Convention.

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.'

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:

[*The Advocate General repeated the questions, and continued:*]

*The transliteration of names in general*

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 'Elt sine,' 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.

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 '<<eta>>' and '<<upsilon>>,' which in modern Greek are both pronounced like the vowel in the English word 'sheep.' Under the ISO system '<< eta>>' is to be rendered by 'e' (with a horizontal bar above it) and '<< upsilon>>' 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 '<<upsilon>>' is pronounced like an English 'v' or 'f' when preceded by 'α' or '<<epsilon>>.' 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 '<<theta>>,' 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 '<<theta>>,' 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 '<< theta>>' are spelt with a 'th' (e.g. Theologie). Other Greek consonants that are distorted by the ISO system are '<<chi>>' (to be transliterated by an 'h,' whereas a 'ch' would be more orthodox and more phonetic for a German speaker) and '<<psi>>,' 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. A good example of the distorting effect of the ISO system is provided by the name of <<GAMMA>><<iota>>aacgr<<nu>><<nu>><<eta>><<zeta>> <<PSI>><<upsilon>><< chi>>aacgr<<rho>><<eta>><<zeta>> (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' [FN9] (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 \*409 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 'Hrésotos 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.

FN9 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.

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*

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 EEC, 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.

Articles 48, 59 and 60 EEC 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.

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.

\*410 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.

The Greek Government strongly disapproves of the system of transliteration recommended by the ISO. It prefers another system developed by the Greek Standards Organisation (ELOT743), 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 EEC.

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.

At the hearing the German Government modified its position somewhat. Its representative referred to Article 2(1) 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 \*411 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.

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** EEC in conjunction with **Article 52** thereof; and (b) whether, even in the absence of any discrimination, his right of establishment

under **Article 52** EEC 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*

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 these points separately.

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 naturalised 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](#). [FN10]

FN10 [\[1974\] E.C.R. 153](#), para. [11].

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 \*412 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.

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 EEC 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. Tresor Public](#). [FN11] 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.

FN11 [\[1989\] E.C.R. 195, \[1990\] 2 C.M.L.R. 613](#), para. [10].

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.

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.

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 1612/28 on freedom of movement \*413 for workers within the Community) 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, Ministere Public v. Mutsch](#) [FN12] 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.

FN12 [\[1985\] E.C.R. 2681, \[1986\] 1 C.M.L.R. 648](#).

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.

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. 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 \*414 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.

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 eleven 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.

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. [FN13] 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

<<chi>><<rho>><<eta>><<sigma>><<tau>><<omicron>><<zeta>> (Christos)  
and <<PSI>><<upsilon>><<chi>>α<<rho>><<eta>><<zeta>> (Psycharis).

FN13 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).

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 \*415 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*

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.

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(1) of the Grundgesetz, which states that the dignity of the individual is inviolable and must be protected by all organs of the State.

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.

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 EEC 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.

The European Convention on Human Rights does not contain any provision which expressly affirms the individual's right to his name and \*416 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 Case 374/87, *Orkem v. E.C. Commission*, [FN14] and Joined Cases C-297/88 & [C-197/89, Dzodzi](#). [FN15] 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 rights 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.

FN14 [1989] E.C.R. 3283, [\[1991\] 4 C.M.L.R. 502](#), para. [31].

FN15 [\[1990\] I E.C.R. 3763](#), para. [68].

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 recognising 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.

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 \*417 State': *Ryan v. Attorney General*. [FN16] 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.

FN16 [1965] I.R. 294, Per Kerry J.

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 italianise their names. [FN17] 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. [FN18]

FN17 See U. de Siervo in *Commentario della Costituzione*, G. Branca, *Rapporti Civili* (Eds.), Arts. 22 and 23, (1978), p. 20.

FN18 V. Falzone, F. Palermo and F. Cosentino, *La Costituzione della Repubblica Italiana*, (1969), p. 87.

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.)

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 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. In view of the above considerations I do not think that it would be right to say that the German authorities' treatment of Mr. \*418 Konstantinidis is necessarily consistent with the European Convention on Human Rights simply because the Convention does not contain express provisions recognising 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.

The more difficult question is to determine whether a person who exercises his right of free movement under Articles 48, 52 or 59 EEC 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, [FN19] where the Court said [FN20]: \*419

[41] S'agissant de l'article 10 de la convention européenne des droits de l'homme, mentionné aux neuvième et dixième questions, il y a lieu de rappeler, à titre liminaire, que selon une jurisprudence constante, les droits fondamentaux font partie intégrante des principes généraux du droit dont la Cour assure le respect. A cet effet, la Cour s'inspire des traditions constitutionnelles communes aux Etats membres ainsi que des indications fournies par les instruments internationaux concernant la protection des droits de l'homme auxquels les Etats membres ont coopéré ou adhéré (voir, notamment, arrêt du 14 mai 1974, Nold, 4/73, Rec. p. 491, point 13). La convention européenne des droits de l'homme revêt, à cet égard, une signification particulière (voir, notamment, arrêt du 15 mai 1986, Johnston, 222/84, Rec. p. 1651, point 18). Il en découle que, comme la Cour l'a affirmé dans l'arrêt du 13 juillet 1989, Wachauf (5/88, Rec. p. 2609, point 19), ne sauraient être admises dans la Communauté des mesures incompatibles avec le respect des droits de l'homme ainsi reconnus et garantis.

FN19 [1991] I E.C.R. 2925.

FN20 The English version of the judgment is not yet available from the Court. What follows is our own translation--Ed. [41] With regard to Article 10 of the European Convention on Human Rights, referred to by the ninth and tenth questions, it should be observed firstly that, according to settled case law, the fundamental rights form an integral part of the general principles of law observance of which is ensured by the Court. For this purpose the Court proceeds from the constitutional principles common to the member-States and from pointers in international instruments concerning the protection of human rights in which the member-States have co-operated or to which they have adhered (*cf.* Case 4/73, Nold: [1974] E.C.R. 491, [1974] 2 C.M.L.R. 338, para. [13]). The European Convention on Human Rights is of particular importance in this connection (*cf.* [Case 222/84, Johnston: \[1986\] E.C.R. 1651, \[1986\] 3 C.M.L.R. 240](#), para. [18]). It follows that, as the Court stated in [Case 5/88, Wachauf: \[1989\] E.C.R. 2609, \[1991\] 1 C.M.L.R. 328](#), para. [19], measures incompatible with the protection of fundamental rights thus recognised and safeguarded cannot be accepted in the Community. [42] According to its case law (*cf.* Joined Cases 60-61/84, Cinetheque: [1985] E.C.R. 2605, [1986] 1 C.M.L.R. 365, para. [26] and [Case 12/86, Demirel: \[1987\] E.C.R. 3719, \[1989\] 1 C.M.L.R. 421](#), para. [28]), the Court has no power to examine the compatibility with the European Convention on Human Rights of national legislation lying outside the scope of Community law. On the other hand, if such legislation is within the ambit of Community law, the Court, when dealing with a request for a preliminary ruling, must give all the guidance on interpretation necessary for the assessment by the national court of the compatibility of that legislation with the fundamental rights observance of which is ensured by the Court and which flow from the European Convention on Human Rights in particular. [43] In particular, where a member-State relies on the combined provisions of Articles 56 and 66 to justify legislation which is likely to impede exercise of the freedom to supply services, such justification, provided for by Community law, must be interpreted in the light of the general principles of law, particularly the fundamental rights. Accordingly the national legislation in question can only come within the exceptions provided for by the combined provisions of Articles 56 and 66 if it is compatible with the fundamental rights observance of which is ensured by the Court. [44] It follows that in such a case it is incumbent on the national court and, if necessary, the Court of Justice to assess the application of these provisions having regard to all the rules of Community law, including the freedom of expression enshrined in Article 10 of the European Convention on Human Rights, as a general principle of the law observance of which is ensured by the Court.

[42] Selon sa jurisprudence (voir les arrêts de 11 juillet 1985, Cinéthèque, 60 et 61/84, Rec. p. 2605, point 26, et du 30 septembre 1987, Demirel, 12/86, Rec. p. 3719, point 28), la Cour ne peut apprécier, au regard de la convention européenne des droits de l'homme, une réglementation nationale qui ne se situe pas dans le cadre du droit communautaire. En revanche, dès lors qu'une telle réglementation entre dans le champ d'application du droit communautaire, la

Cour, saisie à titre préjudiciel, doit fournir tous les éléments d'interprétation nécessaires à l'appréciation, par la juridiction nationale, de la conformité de cette réglementation avec les droits fondamentaux dont la Cour assure le respect, tels qu'ils résultent, en particulier, de la convention européenne des droits de l'homme.

[43] En particulier, lorsqu'un Etat membre invoque les dispositions combinées des articles 56 et 66 pour justifier une réglementation qui est de nature à entraver l'exercice de la libre prestation des services, cette justification, prévue par le droit communautaire, doit être interprétée à la lumière des principes généraux du droit et notamment des droits fondamentaux. Ainsi, le réglementation nationale en cause ne pourra bénéficier des exceptions prévues par les dispositions combinées des articles 56 et 66 que si elle est conforme aux droits fondamentaux dont la Cour assure le respect.

[44] Il s'ensuit que dans un tel cas, il incombe au juge national et, le cas échéant, à la Cour d'apprécier l'application de ces dispositions, eu égard à toutes les règles du droit communautaire, y inclus la liberté d'expression, consacrée par l'article 10 de la convention européenne des droits de l'homme, en tant que principe général du droit dont la Cour assure le respect.

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.

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:

\*420 namely (a) when the national legislation implements Community law (paragraph [19] of [Case 5/88, Wachauf](#)) 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 EEC, there can be no question of its being justified on grounds of public policy under Article 56(1) if it infringes his fundamental rights.

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.

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 EEC 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.

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 [FN21]; 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.

FN21 See, for example, P. Troberg, in *Kommentar zum EWG-Vertrag*, Von der Groeben, Thiesing and Ehlermann (Eds.), (4th Ed., 1991), paras. 37 and 38 on **Article 52**, p. 952 *et seq.*

As regards the first argument, although most of the cases in which \*421 the Court has recognised 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 Lenz A.G. in [Case 221/85, E.C. Commission v. Belgium](#) [FN22]; and on the other hand the comments of Van Gerven A.G. in [Case C-340/89, Vlassopoulou](#). [FN23] 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 [Case C-351/90, E.C. Commission v. Luxembourg](#). [FN24] 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.

FN22 [\[1987\] E.C.R. 719](#) at 730 , [\[1988\] 1 C.M.L.R. 620](#) at 624.

FN23 [\[1991\] I E.C.R. 2357](#) at 2370, [\[1993\] 2 C.M.L.R. 221](#) at 232.

FN24 [\[1992\] 3 C.M.L.R. 124](#), para. [14].

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](#) [FN25]) and more recently in relation to the provision of services, [Case C-76/90, Säger v. Dennemeyer](#). [FN26] 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.

FN25 [\[1979\] E.C.R. 649](#), [\[1979\] 3 C.M.L.R. 494](#).

FN26 [\[1991\] 4221](#), para. [12].

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 'Belgian Linguistic' case [FN27]; *in fine* [Handyside](#) [FN28] and [Eckle](#). [FN29] In any event, applicants must first, under Article 26 of the Convention, exhaust the remedies available under domestic law, \*422 which includes of course the possibility of a reference for a preliminary ruling under **Article 177** EEC. 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.

FN27 A/6, P. 35, § 10 *In Fine*: 1 E.H.R.R. 252.

FN28 Judgment of [7 December 1976 \(A/24\)](#), P. 22, § 48: 1 E.H.R.R. 737.

FN29 Judgment of 15 July 1982 (A/51), PP. 30-31, § 66 *In Fine*: 5 E.H.R.R. 1.

As for the possibility of conflicting rulings on the interpretation of the Convention, that has existed ever since the Court of Justice recognised 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 were to reduce the protection available in national law or in Community law.

## Conclusion

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** EEC, in another member-State which uses an alphabet different from the one used in his own State, **Articles 7** and **52** EEC 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.

## JUDGMENT

[1] By order of 27 June 1991, received by the Court on 1 July following, the Amtsgericht Tübingen requested a preliminary ruling pursuant to Article 177 EEC on two questions relating to the interpretation of Articles 5, 7, 48, 52, 59 and 60 EEC.

[2] The questions have arisen in the context of a dispute between Mr. Christos Konstantinidis and Stadt Altensteig--Standesamt and the Landratsamt Calw--Ordnungsamt.

[3] The applicant in the main action is a Greek national living in Altensteig, Germany, where he works as a self-employed masseur and assistant hydrotherapist. According to his Greek birth certificate, his first name is << chi>><<rho>>eeacgr<<sigma>><<tau>><<omicron>><<zeta>> and his surname <<

KAPPA>><<omega>><<nu>><<sigma>><<tau>>α<<nu>><<tau>><<iota>><<n u>>iacgrδ<< eta>><<zeta>>.

[4] On 1 July 1983 he married at the Altensteig registry office. His name was entered in the marriage register as 'Christos Konstadinidis.' On 31 October 1991 he applied to the Altensteig registrar to rectify the spelling of his surname in the register to 'Konstantinidis' on the ground that this spelling indicated the correct pronunciation of his name in Greek as faithfully as possible to users of the German language and that, furthermore, his surname was transliterated in this way in Latin characters in his Greek passport.

\*423 [5] As the name in the marriage register must correspond to the name shown in the birth certificate, the Amtsgericht Tübingen, which has jurisdiction to order such rectification, obtained a translation of the birth certificate. In conformity with the administrative regulations in force and the settled case law of the superior German court, the applicant's name was transcribed by applying standard ISO-18, which is prescribed by Article 3 of the Convention on the Representation of Names and Surnames in Registers of Civil Status of 13 September 1973 [FN30] ('the Convention'), which provides for transliteration. The Convention came into force in Germany on 16 February 1977. [FN31] Greece acceded to the Convention in 1987. By applying the abovementioned standard ISO-18, the Latin transcription of the applicant's name becomes 'Hrestor

Konstantinides.'

FN30 [1976] II BGB1. 1473.

FN31 [1977] II BGB1. 254.

[6] He challenged this transcription before the Amtsgericht Tübingen on the ground that it misrepresented the pronunciation of his name.

[7] The Landratsamt Calw, the supervisory authority for the registrar of civil status, Altensteig, asked in turn for rectification of the marriage register so that the applicant's name would be shown as 'Hrestos Konstantinides' in conformity with standard ISO-18.

[8] The Amtsgericht Tübingen took the view that the dispute raised problems of the interpretation of Community law and decided to refer the following questions to the Court:

1. Is it an encroachment, contrary to Articles 5 and 7 EEC, 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.* EEC 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 'Hrestos Konstantinides' constitute such an encroachment?

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 EEC?

[9] Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the measures applicable and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

[10] To begin with, it should be observed that it appears from the order making the reference that the applicant in the main proceedings is a Greek national working in Germany as a self-employed masseur and assistant hydrotherapist.

[11] Under these circumstances the national court seeks in effect to \*424 establish, with these two questions, whether Article 52 EEC must be interpreted as meaning that it prevents the name of a Greek national, who is established in another member-State in order to work there on a self-employed basis, from being entered in the registers of civil status of that State in a transliteration differing from the phonetic transcription, whereby its pronunciation is modified and distorted.

[12] To reply to this question it must be observed, firstly, that, as the Court has held on many occasions, **Article 52** constitutes one of the fundamental legal provisions of the Community. In relation to the freedom of establishment this Article commands observance of the rule that nationals of other member- States be treated as those of the member-State concerned, by prohibiting all

discrimination on grounds of nationality arising from legislation, regulations or national practices: see [Case 197/84, Steinhauser](#). [FN32]

FN32 [\[1985\] E.C.R. 1820, \[1986\] 1 C.M.L.R. 53](#), para. [14].

[13] Therefore it is necessary to determine whether national rules concerning the transcription into Latin characters of the name of a Greek national in the registers of civil status of the member-State where he is established are capable of putting him at a legal or factual disadvantage by comparison with the situation of a national of that member-State in the same circumstances.

[14] In this connection it should be observed that there is nothing in the Treaty to prevent the transliteration of a Greek name into Latin characters in the registers of civil status of a member-State which uses the Latin alphabet. Under these conditions it is for that member-State to lay down the procedure for doing so, by legislation or administrative regulation, and in accordance with the rules of international conventions which it has concluded concerning matters of civil status.

[15] Rules of this kind must only be considered incompatible with **Article 52** EEC in so far as their application creates for the Greek national such a constraint that it actually interferes with the unfettered exercise of the right of establishment conferred upon him by that **Article**.

[16] However, this is the case if the law of the State of establishment obliges a Greek national to use for professional purposes a spelling of his name resulting from transliteration in the registers of civil status if that spelling is such that the pronunciation of the name is misrepresented and such distortion exposes him to a risk of confusion of identity on the part of his potential clients.

[17] The reply to the question submitted by the national court must therefore be that **Article 52** EEC must be interpreted as meaning that it prevents a Greek national from being obliged, by the national legislation applicable, to use for professional purposes a spelling of his name which misrepresents the pronunciation of the name and such distortion exposes him to a risk of confusion of identity on the part of his potential clients.

#### *\*425 Costs*

[18] The costs incurred by the German Government, the Greek Government and the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

#### **Order**

On those grounds, THE COURT (Sixth Chamber), in answer to the questions referred to it by the Amtsgericht Tübingen, by order of 27 June 1991  
HEREBY RULES:

**Article 52** EEC must be interpreted as meaning that it is contrary to that provision for a Greek national to be obliged, under the applicable national legislation, to use, in the pursuit of his occupation, a transliteration of his name whereby its pronunciation is modified and the resulting distortion exposes him to the risk of potential clients confusing him with other persons.

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[1993] 3 C.M.L.R. 401

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