Such interference occurs if a Greek national is obliged by the legislation of the State in which he is established to use, in the pursuit of his occupation, a spelling of his name derived from the transliteration used in the registers of civil status if that spelling is such as to modify its pronunciation, with the risk that potential clients may confuse him with other persons.

REPORT FOR THE HEARING
in Case C-168/91 *

I — Facts and Procedure

1. *Legal background*

1. The Convention on the Representation of Names and Surnames in Registers of Civil Status of 13 September 1976 (Bundesgesetzblatt 1976 II, p. 1473) ('the Convention') contains rules for the spelling of names. The Convention came into force in the Federal Republic of Germany on 16 February 1977 (Bundesgesetzblatt 1977 II, p. 254). Greece became a party to the Convention in 1987. The Convention was ratified by Law No 1655/1986, with effect from 18 April 1987 (Official Journal of the Hellenic Republic, first part, 183).

2. Article 1 of the Convention provides that:

'This Convention shall apply to the entry, in registers of civil status, of the surnames and forenames of all persons, whatever their nationality.

It shall not affect the application of rules in force in the contracting States on the determination of surnames and forenames.

...'

Article 2 provides that:

'Where an entry is to be made in a register of civil status by an authority of a contracting State and for that purpose there is produced a copy or extract of a document of civil status or other document establishing the surnames and forenames written in the same

* Language of the case: Greek.

characters as those of the language in which the entry is to be made, those surnames and forenames shall be reproduced literally, without amendment or translation.

The diacritics making up those surnames and forenames shall also be reproduced, even if the diacritics do not exist in the language in which the entry is to be made.'

3. In cases where the surnames or forenames are written using characters other than those of the language in which the entry is to be made, Article 3 provides that:

'... those surnames and forenames shall be reproduced, with no translation, by transliteration as far as possible.

If there are standards recommended by the International Standards Organization (ISO), those standards shall be applied.'

4. In Germany, Paragraph 49(2) of the Dienstanweisung für die Standesbeamten und ihre Aufsichtsbehörden (Instructions for Registry Officials and their Supervisory Authorities) requires registrars of civil status to apply the Convention.

2. *The main proceedings*

5. The applicant is a Greek national residing in Altensteig, in the Federal Republic of Germany. He works there as a self-employed masseur and medical bath attendant.

6. He married on 1 July 1983 in the Registry Office in Altensteig. On his marriage certificate his name is spelt: 'Konst*adi*nidis'. It appears from a copy of the register that the applicant proved his identity with his passport. The newly-weds signed the register in the name 'Konst*adi*nidis'.

7. According to a transcript of his birth certificate of 1 November 1980, date-stamped by the Greek consulate in Stuttgart on 31 May 1983, the applicant's forename and surname in Roman characters are 'Christos Konst*adi*nidis'. A transcript of the birth certificate dated 12 April 1990, date-stamped by the same consulate on 19 June 1990, gives the name 'Christos Konst*anti*nidis'. According to his Greek passport (issued on 26 April 1988), the transcription of his forename and surname in Roman characters is 'Christos Konst*anti*nidis'.

8. On 31 October 1990, the applicant asked the Registry Office in Altensteig to amend the entry of his surname in the Register of Marriages, replacing 'Konstadinidis' with 'Konstantinidis'.

9. As the entry of the applicant's name in the Register of Marriages should correspond to the entry featuring on his birth certificate, the Amtsgericht Tübingen, responsible for such amendments, obtained a translation of the birth certificate. ISO Standard 18, which is prescribed by the Convention and provides for a transliteration, was applied and gave the Roman transcription of the applicant's name as 'Hréstos Kónstantinidés'.

10. The applicant appealed to the Amtsgericht Tübingen against this transcription, arguing that it distorted the pronunciation of his name.

11. For its part the Landratsamt Calw, the district office for supervising the Registry in Altensteig, asked for an amendment to the Register of Marriages so that the name appears as 'Hréstos Kónstantinidés', in accordance with ISO Standard 18.

3. *The preliminary questions*

12. The Amtsgericht Tübingen considered that the proceedings raised problems of interpretation and application of Community law and decided to ask the following preliminary questions:

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 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?

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?

4. *Procedure*

13. The Order of the Amtsgericht Tübingen was received at the Court Registry on 1 July 1991.

14. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were submitted by:

— the German government, represented by Ernst Röder, Ministerialrat at the Federal Ministry for Economic Affairs, and by Claus-Dieter Quassowski, Regierungsdirektor at the Federal Ministry for Economic Affairs,

— the Greek government by Dimitrios Raptis, State Legal Adviser,

— the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, assisted by Roberto Hayder, of its Legal Service in Luxembourg, acting as Agents.

15. Upon hearing the Report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. By a decision of 17 June 1992, the Court assigned the case to the Sixth Chamber.

II — Summary of the written observations submitted to the Court

16. The *German Government* proposes a negative reply to the first question.

17. The disputed transposition of the applicant's name does not interfere with his rights under the EEC Treaty. A transcription carried out according to certain established rules of transliteration leads to uniform results even if the linguistic area is different. That transcription guarantees that the name is reproduced in the same way in all the Member States who have signed the Convention. The Convention has solely a function of standardization, consisting in preventing the same person from having different names in the different Member States.

18. Given that, in the Community, names in documents in Greek letters are the only ones to be transposed into Roman characters, the difference in treatment of Greek nationals in relation to nationals of other Member States is not discriminatory. That difference is objectively justifiable.

19. According to the German Government, the second question should also be answered in the negative. A uniform transcription of names according to the rules laid down in an international Convention favours legal clarity and facilitates rather than hampers free movement.

20. The *Greek Government* notes that the use of the ISO Standard R 843 has led to a great number of Greek nationals established in Germany having problems in their social activities. The Greek Government considers that the ISO standard is insufficient, and, in many respects, incorrect. The Greek Government applies the 743 standard adopted on 1 June 1982 by the Greek Standards Office (ELOT) for the transposition of Greek names and surnames into Roman characters. ELOT standard 743 has already been adopted by NATO and the United Nations. According to the Greek Government, ISO standard R 843 needs revising.

21. The use of the ISO standard by the German civil authorities rather than the ELOT standard used in documents issued by the Greek authorities (for example Greek passports) infringes, in the light of Articles 5 and 7 of the EEC Treaty, the rights stemming from Articles 48, 52, 59, 60 et seq. The registering of surnames and forenames according to a method which does not use phonetic transcription may even lead to doubt arising as to the identity of those concerned in their everyday life, in their place of residence and in the exercise of their rights under the EEC Treaty.

22. The *Commission* notes first of all that hitherto there has been neither nationally or internationally a uniform or legally required method of transcription. Nor are there even any mandatory rules on this matter in the Commission's translation departments.

23. On the facts, the Commission considers that the applicant has been hampered in the exercise of his right to freedom of establishment. The replies to both preliminary questions may be linked in this respect. The questions relating to a potential infringement of his right to free movement may be regarded as secondary.

24. According to the Commission, a certain spelling of the surname may be of great importance for the applicant's image with his clients. It should be established whether the applicant is legally bound to use the spelling of his name which features on the civil status registers in order to exercise a professional activity. Hidden indirect interference may also result from the fact that, as a consequence of the difference between the spelling of a person's name in documents from the country of origin and the spelling, in Roman characters, in documents in the host country, he may encounter administrative or commercial difficulties avoided by nationals.

25. Moreover, the derogations provided for by Article 56 of the Treaty cannot justify any interference with the exercise by the applicant of his right of establishment. However, the Commission wonders whether the Court has jurisdiction, where the national legislation which is the subject of the litigation does not fall within the sphere of application of Community law. In such circumstances, the disputed legislation may prejudice the right to free movement.

26. The Commission argues further that, wherever a certain pronunciation and spelling of an individual's name have been recognized in his Member State of origin and where that name must be amended in the host Member State, there is a breach of fundamental rights which is incompatible with general human rights.

27. The Commission therefore concludes thus:

'1. A national of a Member State of the Community may be disadvantaged by comparison with nationals with respect to his right to free movement, within the meaning of Articles 7, 48 and 52 of the EEC Treaty, if, in another Member State, he is obliged to spell his name in a way which differs from the phonetic transcription to the point where the pronunciation of that name is modified and deformed, in so far as it has been established

— that he is obliged to use that transcription of his name in order to exercise and gain access to a professional activity, whether self-employed or not, in the host country,

— that there are grounds for fearing real and substantial loss of earning capacity,

— that he may be expected to face administrative difficulties as a result of the different spelling of his name by the authorities in his country of origin and those in the host Member State.

2. The administrative measure by which a Member State imposes on the national of another Member State of the Community a different spelling of his name than the one used in his country of origin also infringes general human rights protected by Community law, if that measure is such as to affect the right to free movement guaranteed by the EEC Treaty.'

P. J. G. Kapteyn
Judge-Rapporteur