OPINION OF ADVOCATE GENERAL JÄÄSKINEN
delivered on 16 December 2010 [1]

I — Introduction

1. The present reference to the Court for a preliminary ruling was made in the context of proceedings between, on the one hand, a Lithuanian national of Polish ethnic origin, [2] Malgožata Runevič-Vardyn, and her husband, the Polish national Łukasz Paweł Wardyn, and, on the other, the Civil Registry Division of the Legal Affairs Department of the Municipal Administration of the City of Vilnius, Lithuania, following the latter's refusal to amend the forenames and surnames of the interested parties as entered on the birth and marriage certificates issued to them by the Division.

2. The applicable Lithuanian legislation provides that the forenames and surnames of natural persons must be entered [3] in documents indicating civil status in accordance with the rules governing the spelling of the official national language. It follows that the use of Roman characters alone is authorised, with the exception of diacritic marks [4], ligatures [5] or any other graphic amendments made to the letters of the Roman alphabet, which are used in other languages but do not exist in the Lithuanian language.

3. The referring court, the Vilniaus miesto 1 apylinkės teismas (First District Court of

1 — Original language: French.

2 — Ms Runevič-Vardyn claims that she belongs to the Polish community living in Lithuania, which represents approximately 7% of the population and resides principally in the city and county of Vilnius. Her parents are of Polish origin and she has submitted documents going back several generations which demonstrate strong cultural, linguistic and emotional links with the population of Polish origin living in the Vilnius region.

3 — This case concerns the registration of forenames and surnames in letters of the Roman alphabet, not the transliteration from the two other alphabets existing in the official languages of the Union, namely the Cyrillic and Greek alphabets. On this latter point, see the judgment in Case C-168/91 *Konstantinidis* [1993] ECR I-1191.

4 — A diacritic or diacritic mark is a graphic element used in many languages that use the Roman alphabet, which may be placed above, below, beside or through a letter, altering its pronunciation and even creating an additional letter. For example, in German, the diaeresis '¨', called the Umlaut, which is added over a letter such as the 'A', indicates a change in that letter's pronunciation, whereas in Finnish the 'Ä' is a letter in itself.

5 — A ligature consists in the fusion of two graphemes in a script in order to form only one new one, whether or not regarded as a letter in itself (for example, 'OE' which becomes 'Œ').

the City of Vilnius), asks whether the provisions of Article 2(2)(b) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [6] which have not yet been interpreted in a preliminary ruling, or the provisions of Articles 12 EC and 18 EC, preclude such national legislation.

4. The Court has already considered several questions referred for a preliminary ruling relating to the civil status of citizens of the European Union, and in particular to their surnames. [7] In its recent case-law, it has adopted a fairly favourable attitude to individuals who have called into question administrative practices relating to the entry of surnames in documents indicating civil status. In the present case, the Court is called upon principally to determine whether a person who belongs to an ethnic minority or a national of another Member State may invoke European Union law for the purposes of requiring the authorities of a Member State to use his/her mother tongue, contrary to the constitutional principles in force in that State for safeguarding the official national language.

5. The present reference for a preliminary ruling reveals that the problems raised here provoke keen emotions, both in the parties to the main proceedings and in the Member States concerned. [8] It is true that this case has sensitive historical and geopolitical aspects. The region of Vilnius was the scene of a complicated political conflict in the interwar period in Europe and the fate of the population of Polish origin in that region continues to give rise to political tensions between the Republic of Lithuania and the Republic of Poland, two Member States linked by a long common history, from 1386 to 1918, both within the Poland-Lithuania Union and the Russian Empire.

6. Forenames and surnames are very important, from the point of view both of individuals and States. For a person, his name and its spelling may constitute an essential factor

6 — OJ 2000 L 180, p. 22.

7 — See the judgments in *Konstandinis*, Case C148/02 *Garcia Avello* [2003] ECR I-11613 and Case C-353/06 *Grunkin and Paul* [2008] ECR I-7639. Other cases have related to the transcription of a date of birth in a document indicating civil status, for example Case C-336/94 *Dafeki* [1997] ECR I-6761.

8 — See, inter alia, the article in the British magazine *The Economist* of 23 October 2010 and that in the Finnish daily *Helsingin Sanomat* of 19 November 2010, which refer to the deterioration in the relationship between the Republic of Lithuania and the Republic of Poland with regard to the transcription of forenames and surnames of Polish origin in Lithuanian documents indicating civil status.

of psychological or ethnic, even national, identity. [9] As an example of that phenomenon, we could mention the voluntarily changes in surnames of 'foreign' origin which took place on a huge scale in Finland at the beginning of the 20th century. Throughout history, motives which, to a greater or lesser degree, have been nationalist have also inspired forced and no longer desired changes in the surnames of national or ethnic minorities which have occurred in several European countries, as well as legislation requiring forenames to be written according to a national variant, excluding foreign letters, in documents indicating civil status. Individual freedom in this area is also limited in several countries by reference to considerations of public policy. [10] The tension between the interests of individuals and those of States in the sphere of forenames and surnames is perceptible in the case-law of the Court, as in that of the European Court of Human Rights. [11]

II — Legal framework

A — *International law*

1. The European Convention for the Protection of Human Rights and Fundamental Freedoms

7. Article 8 of this Convention ('the ECHR') is worded as follows:

'1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

9 — The European Court of Human Rights has thus described a name as 'the principal factor which individualises a person in society' (judgment of 9 November 2010 in *Losonci Rose and Rose* v *Switzerland*, Case No 664/06, paragraph 51).

10 — See Kangas, U., *Ihmisen nimi [A person's name]*, Lakimiesliiton kustannus, Helsinki, 1991, pp. 5, 6 and 12.

11 — Nina Holst-Christensen notes that decisions such as the judgment in *Grunkin and Paul* may be regarded as irritating from the point of view of the Member States, but they give citizens the opportunity to denounce rules which are inconvenient or outdated. See Holst-Christensen, N., 'What's in a Name? — EU-retten som korrektionsfaktor i forhold til national navnelovgivning [Union law as a correcting factor in relation to national legislation concerning names]', *Familieret og engagement — Hilsener til Svend Danielelsen*, Thomson Reuters Professional A/S, København, 2009, pp. 187 to 197.

2. ICCS Convention No 14 on the recording of surnames and forenames in civil status registers

8. The Convention signed in Berne on 13 September 1973 under the aegis of the International Commission on Civil Status ('ICCS Convention No 14') on the recording of surnames and forenames in civil status registers entered into force on 16 February 1977. [12]

9. Article 2 of that Convention provides:

'Where a record is to be made in a civil status register by an authority of a Contracting State and there is produced for that purpose a copy of or extract from a civil status record or some other document that shows the surnames and forenames in the same characters as those used in the language in which the record is to be made, those surnames and forenames shall be reproduced literally without alteration or translation.

Any diacritic marks forming part of such surnames and forenames shall also be reproduced, even if such marks do not exist in the language in which the record is to be made.'

12 — The States which are parties to ICCS Convention No 14 are the Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Republic of Turkey. Neither the European Union nor the Member States directly concerned by the present case, namely the Republic of Lithuania and the Republic of Poland, are bound by that Convention.

B — *European Union law*

1. The Treaty on European Union

10. Article 4(2) of the Treaty on European Union provides:

'The Union shall respect the equality of Member States before the Treaties as well as their national identities...'

2. The Charter of Fundamental Rights of the European Union

11. Article 7 of the Charter of Fundamental Rights of the European Union [13] is worded as follows:

'Everyone has the right to respect for his or her private and family life, home and communications.'

13 — Proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1), amended and given binding legal force at the time of the adoption of the Treaty of Lisbon (OJ 2007, C 303, p. 1, 'the Charter of Fundamental Rights').

3. The EC Treaty [14]

12. The first paragraph of Article 12 EC (now the first paragraph of Article 18 TFEU) provides:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

13. Article 18(1) EC (now Article 21(1) TFEU) provides:

'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.'

4. Directive 2000/43

14. Directive 2000/43, adopted on the basis of Article 13 EC, implements the principle of equal treatment as between persons irrespective of racial or ethnic origin.

15. Article 2(2)(b) of Directive 2000/43 provides:

'[I]ndirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'

16. Article 3 of Directive 2000/43 defines its scope as follows:

'1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(h) access to and supply of goods and services which are available to the public, including housing.

2. This Directive does not cover difference[s] of treatment based on nationality and is without prejudice to provisions and conditions

14 — Articles 12 EC and 18 EC, to which the questions referred for a preliminary ruling refer, have become Articles 18 TFEU and 21 TFEU. However, since the present case relates in the main proceedings to the application of provisions of Lithuanian law in their version prior to the entry into force of the Treaty on the Functioning of the European Union, reference will be made to the provisions of the EC Treaty according to the numbering applicable before that date.

relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.'

C — *Lithuanian law*

1. The Constitution

17. Article 14 of the Lithuanian Constitution provides that the official language is Lithuanian.

2. The Civil Code

18. Article 2.20(1) of the Civil Code of the Republic of Lithuania ('the Civil Code') states that 'every person shall enjoy the right to a name. This right to a name includes a right to a surname, to one or more forenames and to a pseudonym.'

19. Article 3.31 of the Civil Code provides:

'Each spouse shall have the right to retain the surname which he or she had prior to marrying, to choose the surname of the other spouse as their common surname or to have a double-barrelled surname formed by adding the spouse's surname to his or her own surname.'

20. Article 3.281 of the Civil Code provides that documents indicating civil status must be registered, renewed, modified, supplemented or corrected in accordance with the civil registration rules issued by the Minister for Justice.

21. Article 3.282 of the Civil Code provides that 'entries on certificates of civil status must be made in Lithuanian. Forenames, surnames and place names must be written in accordance with the rules of the Lithuanian language.'

3. The rules governing civil status

22. Paragraph 11 of Decree No IR-294 of 22 July 2008 of the Lithuanian Minister for Justice confirming the civil registration rules [15] states that entries in documents indicating civil status must be written in Lithuanian.

15 — Žin., 2008, n° 88-3541.

III — The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court of Justice

23. Ms Malgožata Runevič-Vardyn, born on 20 March 1977 in Vilnius, is a Lithuanian national of Polish ethnic origin. She states that her parents gave her the Polish forename 'Małgorzata' and her father's surname 'Runiewicz'.

24. According to the decision making the reference, on the birth certificate issued to her on 14 June 1977, her forename and surname were entered in their Lithuanian form 'Malgožata Runevič'. The same forename and surname appear on a new birth certificate issued on 9 September 2003 by the Civil Registry Division of the City of Vilnius, and also on the Lithuanian passport issued to her by the competent authorities on 7 August 2002.

25. It is, however, stated in the observations of the applicants in the main proceedings that the birth certificate issued in 1977 was written in Cyrillic characters, [16] and that the forename and surname appear in the form 'Malgožata Runevič' only in the version of that certificate issued in 2003 and in the passport received in 2002. The first applicant states that, at her request, her Polish 'nationality' was mentioned on that passport. [17] She adds that, in accordance with Polish law, a birth certificate on which her forename and surname appeared as 'Małgorzata Runiewicz', was issued to her on 31 July 2006 by the Civil Registry Office of the City of Warsaw.

26. On 7 July 2007, after she had lived and worked in Poland for some time, the first applicant in the main proceedings married Łukasz Paweł Wardyn, a Polish national, in Vilnius. On the marriage certificate issued by the Civil Registry Division of the City of Vilnius, 'Łukasz Paweł Wardyn' is written in the form 'LUKASZ PAWEL WARDYN' in capitals letters, that is, using the Roman alphabet without diacritic marks, while his wife's surname appears in the form 'MALGOŽATA RUNEVIČ-VARDYN', that is, using only Lithuanian characters, which do not include the letter 'W'. They state that, in 2008, they received a Polish marriage certificate on which their forenames and surnames are written in

16 — The file sent to the Court contains a copy of the original birth certificate, as issued by the authorities of Soviet Lithuania. In it is written 'Малгожата Михайловна Руневич', which is a direct transliteration in Cyrillic characters of the Lithuanian form of the child's forename and of the forename with feminine suffix and surname of her father. That certificate also states, under the headings 'Национальность', that is to say 'nationality', with regard to the father and mother of the child concerned 'Поляк' and 'Полька' respectively, that is, 'Polish' (m) and 'Polish' (f).

17 — However, at the hearing, Mr Wardyn stated that his wife has Lithuanian nationality and that she cannot hold dual nationality.

Polish form. [18] The parties concerned are currently residing in Belgium with the child of their marriage.

27. On 16 August 2007, the first applicant in the main proceedings submitted to the Civil Registry Division of the City of Vilnius a request that her forename and surname be changed on her birth certificate from 'Malgožata Runevič' to 'Małgorzata Runiewicz' and that the forename and surname entered on her marriage certificate be changed from 'Malgožata Runevič-Vardyn' to 'Małgorzata Runiewicz-Wardyn'.

28. By reply of 19 September 2007, the aforementioned Division informed Ms Runevič-Vardyn that, under the legal rules in force in Lithuania, it was not possible to amend the entries made in documents indicating civil status.

29. The decision making the reference also indicates that Ms Runevič-Vardyn and Mr Wardyn brought legal proceedings seeking an order requiring the Civil Registry Division of the City of Vilnius to issue a new birth certificate and a new marriage certificate in accordance with the requests which Ms Runevič-Vardyn had submitted to that Division.

30. As it took the view that it was unable to give a clear answer to the questions relating to the interpretation and application of Community law raised in the case before it, the Vilniaus miesto 1 apylinkės teismas decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In the light of the provisions of Directive 2000/43..., is Article 2(2)(b) of that directive to be construed as prohibiting Member States from indirectly discriminating against individuals on grounds of their ethnic origin in a case where national legal rules provide that their forenames and surnames may be written in certificates of civil status using only the characters of the national language?

(2) In the light of the provisions of Directive 2000/43..., is Article 2(2)(b) of that directive to be construed as prohibiting Member States from indirectly discriminating against individuals on grounds of

18 — At the hearing, the Polish Government stated that the birth and marriage certificates in question had had to be issued under a bilateral treaty, signed between the Republic of Lithuania and the Republic of Poland on 26 April 1994, Article 14 of which provides that the contracting parties declare that the persons listed in Article 13(2) have a special right to use their forenames and surnames in the language of the ethnic minority to which they belong. It stated that it did not preclude a Polish civil status official from being able to regard that provision as a directly applicable rule.

their ethnic origin in a case where national legal rules provide that the forenames and surnames of individuals of different origin or nationality must be written on certificates of civil status using Roman characters and not employing diacritical marks, ligatures or other modifications to the characters of the Roman alphabet which are used in a variety of languages?

(3) In the light of Article 18(1) EC, which provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, and in the light of the first paragraph of Article 12 of that Treaty, which prohibits discrimination on grounds of nationality, should those provisions be construed as prohibiting Member States from providing in national legal rules that forenames and surnames may be written on certificates of civil status using only the characters of the national language?

(4) In the light of Article 18(1) EC, which provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, and in the light of the first paragraph of Article 12 of that Treaty, which prohibits discrimination on grounds of nationality, should those provisions be construed as prohibiting Member States from providing in national legal rules that the forenames and surnames of individuals of different origin or nationality must be written on certificates of civil status using Roman characters and not employing diacritical marks, ligatures or other modifications to the characters of the Roman alphabet which are used in other languages?'

31. In the present case, both written and oral observations have been made by Ms Runevič-Vardyn and M. Wardyn, by the Lithuanian, Estonian, Latvian and Polish Governments and by the European Commission. The Czech, Portuguese and Slovak Governments have submitted only written observations.

IV — Analysis

A — *The admissibility of the questions referred for a preliminary ruling*

32. The Lithuanian Government has raised a plea of inadmissibility regarding certain of

the questions referred for a preliminary ruling. It infers that the Court manifestly lacks jurisdiction to reply to them. In support of its claims, it has raised two categories of objections.

33. As regards the second and fourth questions, that Government submits that they are inadmissible because they are unrelated to the actual facts of the main action or its purpose in so far as Mr Wardyn is concerned.

34. With regard to all of the questions referred for a preliminary ruling, the Lithuanian Government, supported on this point by the Czech Government, expresses the view that they are inadmissible since they refer to national rules governing the spelling of the forename and maiden name of Ms Runevič-Vardyn, on the ground that those spelling rules relate to a situation which is purely internal to Lithuania and therefore do not concern other Member States.

35. As regards the first objection, concerning Mr Wardyn's procedural position, I would point out that it is apparent from the case-law that, by the expression 'parties', the first paragraph of Article 23 of the Statute of the Court of Justice of the European Union is referring to those who have that status in the case pending before the national court from which the reference for a preliminary ruling originates, and to no other person. [19]

36. As regards the admissibility of a question referred for a preliminary ruling when it is unrelated to the subject-matter of the dispute or hypothetical, I note that, according to settled case-law, [20] in the context of the procedure for making a reference for a preliminary ruling, the national court is best placed to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where questions submitted concern the interpretation of European Union law, the Court of Justice is bound, in principle, to give a ruling.

37. In the present case, the national court states, in the decision for reference, that it was seised by Ms Malgožata Runevič-Vardyn and Mr Łukasz Paweł Wardyn jointly, who are described by that court as 'applicants'. Since Mr Wardyn is a party to the main proceedings, he is therefore also a party to the procedure before the Court of Justice. The questions referred for a preliminary ruling are therefore not inadmissible in so far as he is concerned, even if it should turn out to be the case that the subject-matter of the action

19 — See, inter alia, Case C-116/02 *Gasser* [2003] ECR I-14693, paragraph 27.

20 — See, inter alia, Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 34 et seq.; Case C-98/09 *Sorge* [2010] ECR I-5837, paragraph 24; and Case C-45/09 *Rosenbladt* [2010] ECR I-9391, paragraph 32.

before the referring court is limited to the position of Ms Runevič-Vardyn.

38. The national court considered that it was both necessary for the purpose of giving its decision and legally relevant to include matters of fact and of law concerning Mr Wardyn in the questions which it referred. The aforementioned case-law shows that the Court may refuse to rule on a question referred for a preliminary ruling only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, or where the problem is hypothetical. My view is that this is not the position in the present case.

39. With regard to the second objection, which relates to the claim that the subject-matter of the questions referred for a preliminary ruling is purely internal since they concern the forename and maiden name of Ms Runevič-Vardyn, I note that, in the light of the case-law of the Court, [21] that problem is not part of a plea of inadmissibility but of a question on the substance, which will be examined below.

40. It is therefore necessary to give a reply to all of the questions referred for a preliminary ruling, including in so far as they relate to the civil status of Ms Runevič-Vardyn prior to her marriage.

21 — Case C-254/98 *TK-Heimdienst* [2000] ECR I-151, paragraphs 14 and 15.

B — *Substance*

1. Preliminary observations

(a) The division of powers

41. European Union law does not detract from the power of the Member States to organise their systems for recording forenames and surnames in documents indicating civil status. [22] In the absence of harmonisation of the concept of civil status at European Union level, [23] it is for the legislation of each Member State to determine the conditions for entering, amending or writing such elements in the registers concerned.

22 — See, inter alia, Case C-444/05 *Stamatelaki* [2007] ECR I-3185, paragraph 23. With regard to the significant differences which exist between the national rules concerning surnames, and the elements of that situation, see *Dafeki*, paragraph 14 et seq.

23 — 'Civil status may be defined as the manner of establishing the main facts relating to the status of individuals and families, such as birth, marriage, name or nationality. By extension, "civil status" is also used to designate the public service responsible for drawing up the documents which record those facts, celebrating marriages and issuing certificates, family record books and other documents', according to a report by the French Senate on the International Commission on Civil Status (No 277, ordinary session 2001-2002). However, there is no definition of civil status common to all the Member States, and some of them are able to use different terms for the two kinds of subject-matter indicated in this citation.

42. However, the fact remains that, when exercising the powers reserved to them, the Member States must comply with European Union law, and particularly in the present case with the provisions relating to the principle of non-discrimination, to citizenship of the European Union and to the free movement of persons. [24]

(b) The temporal aspects of the dispute in the main proceedings

43. Two temporal factors may pose a problem with regard to Ms Runevič-Vardyn's birth certificate, which was first drawn up in Cyrillic characters, in 1977, by the authorities of Soviet Lithuania, [25], and then gave way to a new version, in Lithuanian, issued in 2003. The Republic of Lithuania, after having restored its independence in 1990, did not join the European Union until 1 May 2004. Accordingly, Ms Runevič-Vardyn did not exercise the rights and powers guaranteed by European Union Law, inter alia, the right to move and reside attached to European Union citizenship, until several years after registration of her forename and surname.

44. The question therefore arises as to the temporal scope of the provisions of EU Law referred to in the order for reference, from two viewpoints, one general and the other individual.

45. From the first viewpoint, it may be noted that, by joining the European Union, the Member State concerned is deemed to have incorporated the *acquis communautaire*, as it emerges from Directive 2000/43 and from the provisions of the EC Treaty referred to by the order for reference, and that from the time of its accession, the Republic of Lithuania was required to comply and ensure compliance with those rules. However, in my view, that duty does not give rise to a retroactive obligation to amend the content of administrative documents which existed before the State concerned became a member of the Union and which relate to facts which occurred prior to that date.

46. From the second viewpoint, the view should be taken that Ms Runevič-Vardyn's crossborder situation certainly arose long after her identity had been recorded in the document indicating civil status at issue, but that what is sought is the application of European Union law in order to draw the appropriate conclusions with regard to that situation, and with regard to any other situation already ongoing which now falls within the scope of that law, from the time at which the provisions at issue entered into force in that Member State.

47. In my view, European Union law cannot require that a birth certificate drawn up before accession be amended retroactively. On the other hand, it is conceivable that it may

24 — See, inter alia, *Garcia Avello*, paragraph 25.

25 — I note that the annexation of the Baltic States to the Soviet Union was at that time recognised *de facto* by all the European States.

create the right for an individual to request a Member State to issue him with a document indicating civil status showing the details included on his birth certificate but using a different spelling in the identification of his forename and surname, as the Lithuanian authorities did in respect of Ms Runevič-Vardyn in 2003.

(c) The crossborder aspects of the dispute in the main proceedings

48. The Lithuanian Government relies on the fact that all the elements of certain parts of the main proceedings are confined to its territory alone, that is to say, Ms Runevič-Vardyn's requests concerning the amendment of her forename and surname on her birth certificate do not fall within the scope of the provisions of European Union law since that document was drawn up in Lithuania and concerns a Lithuanian national. I would point out that this is a matter relating to the substance and not to a plea of inadmissibility.

49. On the other hand, the association with European Union law is in no doubt with regard to the other aspects of the case, namely those relating to the registration of the names of the two applicants in the main proceedings on their marriage certificate, because they are spouses of different nationalities who have both exercised their right to move freely within the European Union.

50. As regards Directive 2000/43, it should be pointed out that this implements the principle of the prohibition of discrimination on grounds of racial or ethnic origin which is enshrined in Article 13(1) EC. The scope of that principle is limited not by whether or not the situation concerned is of an internal nature, but, generally, by the limitation of the powers conferred on the Community (or on the European Union) and, specifically, by the scope of Directive 2000/43, as defined by that directive itself, and it should be pointed out that, in my view, this also includes situations which are wholly internal. [26]

51. As regards the applicability of Article 12 EC and Article 18 EC, this depends on whether or not the situation comes within the scope of the EC Treaty. As I have already pointed out, the questions connected with the marriage certificate clearly come within the scope of the provisions of the law of the European Union concerning the fundamental freedoms. So far as concerns the birth certificate issued to Ms Runevič-Vardyn in 2003, I would point out that she has mentioned a series of practical difficulties which she claims to have suffered in Poland and in Belgium by reason of the differences in the spelling of her

26 — To that effect, Ringelheim, J., 'The Prohibition of Racial and Ethnic Discrimination in Access to Services under EU Law', *European Anti-discrimination Law Review*, Issue nº 10, 2010, p. 11, citing: Bell, M., *Anti-Discrimination Law and the European Union*, Oxford University Press, 2002, p. 137.

surname as between the Lithuanian documents indicating civil status and the Polish documents indicating civil status which relate to her family and to herself. In my view, the situation of a European Union citizen who has exercised his freedom of movement and has married a national of another Member State cannot, as regards documents indicating civil status issued in his country of origin, be described as purely internal if, under the legislation of that country, the name which is common to both spouses cannot be written in a uniform manner in the documents indicating civil status which concern them both. Such a situation comes within the scope of the EC Treaty.

52. In the present case, there are, it is true, indeed elements of the main proceedings which are confined to Lithuanian territory. Nevertheless, according to settled case-law, the Court cannot refrain from giving a ruling on that ground alone. [27] The decisive criterion is whether or not the interpretation sought has any connection with the main proceedings. It may be seen that, in practice, the content of Ms Runevič-Vardyn's birth certificate may serve as the basis for the entries in other documents, such as her passport or marriage certificate, which also form the subject-matter of the dispute. Therefore, although certain facts are confined to the national territory, a reply might none the less be useful to the national court.

27 — See, inter alia, Case C-300/01 *Salzmann* [2003] ECR I-4899.

53. I accordingly take the view that the Court should reply to the questions referred to it for a preliminary ruling.

2. The applicability of Directive 2000/43

54. If the claims made in the dispute in the main proceedings, relating to the existence of indirect discrimination based on ethnic origin [28] within the meaning of Directive 2000/43, do not come within the scope of the provisions of that directive, the Court does not have jurisdiction *ratione materiae* to reply to the first and second questions referred for a preliminary ruling by the national court.

55. The overwhelming majority of the parties who have submitted observations express the view that Directive 2000/43 is not designed to apply in the present case. The only exceptions

28 — The European Court of Human Rights has held that 'ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds' in the judgment of 13 December 2005 in *Timishev* v *Russia* (Applications No 55762 and No 55974/00, *Reports of Judgments and Decisions*, 2005-XII, paragraph 55). See also De Schutter, O., 'The prohibition of discrimination under European Human Rights Law - Relevance for EU racial and employment equality directives', report published under the aegis of the European Commission, OPOCE, Luxembourg, 2005, especially. pp. 7, 15, 38 and 39.

are the applicants in the main proceedings and the Portuguese Government. [29]

56. The applicants in the main proceedings point out that the material scope of that directive is very broad and encompasses numerous aspects of social life. Indeed, unlike other directives relating to the implementation of the principle of equal treatment, Directive 2000/43 extends beyond the field of employment and professional training, as the legislature envisaged. [30]

57. Admittedly, unlike Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [31] Directive 2000/43 does not expressly exclude matters of civil status from its scope of application. Nevertheless, the proposal which led to the adoption of Directive 2000/43 states that the areas covered by the Directive are covered only in so far as they fall within the limits of the powers conferred by the EC Treaty upon the Community. [32] Article 3 of the Directive points out that it was adopted taking account of those limits. However, as I have noted, the recording of forenames and surnames in civil status registers does not come within the competence of the Union.

58. Furthermore, Article 3(1) [33] of Directive 2000/43, which gives an exhaustive definition of the material scope of the directive, does not, in my view, include any element relating to the specific areas of civil status and the preparation of the corresponding documents. The areas in which discrimination based on racial or ethnic origin is prohibited include that referred to in Article 3(1)(h), 'access to and supply of goods and services which are available to the public, including housing'. That is the only heading which might be relevant in the present case, since the others refer to professional, social or training aspects which have no connection with the subject-matter of the main proceedings. However, the view cannot be taken that the legislation concerning the spelling of forenames or surnames to be used in documents indicating civil status comes directly under the concept of 'service' within the meaning of that provision. [34]

29 — The Portuguese Government does not comment expressly on that point, but states a view to the effect that Directive 2000/43 is incompatible with national legislation such as that at issue in the main proceedings.

30 — According to the proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, of 25 November 1999, COM(1999) 566 final, p. 5: 'a comprehensive coverage is necessary to make a serious contribution to curbing racism and xenophobia in Europe'. See also recital 12 in the preamble to Directive 2000/43.

31 — OJ 2000 L 303, p. 16. The difference noted between these two directives is all the more significant in light of the fact that they were adopted during the same period and on the same legal basis, namely Article 13 EC.

32 — Proposal for a Directive COM(1999) 566 final, p. 7.

33 — As stated in recital 13 in the preamble to Directive 2000/43, Article 3(2) excludes from its scope discrimination on grounds of nationality.

34 — With regard to this concept, see the article by Ringelheim, J., cited above, p. 11 et seq.

59. The applicants in the main proceedings maintain that their situation comes within the scope of those provisions on the ground that it is necessary to present an identity document and various types of documents, certificates or diplomas in order to enjoy certain rights, and in order to have the opportunity to make use of the goods and services covered by Article 3(1) of Directive 2000/43.

60. However, I am not persuaded by this reasoning. The *travaux préparatoires* relating to that directive [35] state that Article 3(1)(h) requires that 'decisions' about providing access to goods and services, or about the supply of goods and services, should not be based on racial or ethnic origin. In order to illustrate to what discrimination in the access to goods and services, which limits social and economic integration, may refer, the Commission gave the example of access to finance as a consequence of decisions on loans to small companies or on mortgages. [36] The link between the decision taken and the access to the service applied for is direct and evident, in that example. By contrast, I do not consider that the measures concerned by the main proceedings can be covered by such a causal connection.

61. The approach advocated by the applicants in the main proceedings can be accepted only by taking into consideration the indirect effects of the legislation concerning the spelling of forenames and surnames, in so far as this legislation may have not the declared or underlying purpose, but the practical consequence, of limiting the access of the parties concerned to certain goods or services, such as purchasing plane tickets, opening a bank account or carrying out any other administrative procedure, whereas other spouses placed in an equivalent situation are not confronted by such potentially discouraging obstacles. [37]

62. I do not subscribe to this line of argument. If there were any discrimination in the situations described above, it would stem not from the legislation concerned itself but from the reactions of suppliers of goods and services to the documents indicating civil status presented to them. Such behaviour on the part of private persons must be distinguished from measures taken by the public authorities.

63. Moreover, it is not possible to decide *a priori* whether discrimination based on ethnic origin practised by the suppliers of goods and services may be the consequence of the

35 — Proposal for a Directive COM(1999) 566 final, p. 8.

36 — Proposal for a Directive COM(1999) 566 final, p. 5.

37 — This point of view may be upheld since, as regards discrimination, what matters is the impact of the legislation at issue rather than the intention of the legislature. Accordingly, Article 2(2)(b) of Directive 2000/43 refers to the 'disadvantage' suffered. Similarly, in Case C-54/07 *Feryn* [2008] ECR I-5187, the Court concentrated on the specific effect of the contested measure, namely its dissuasive effect, for the purpose of establishing direct discrimination in staff recruitment within the meaning of Article 2(2)(a) of Directive 2000/43.

indication of that origin, either directly (as such), or indirectly (through the spelling of forenames and surnames) in the documents indicating civil status or may, rather, be the result of the omission of that indication. In the circumstances of the main proceedings, Ms Runevič-Vardyn refers to the difficulties suffered owing to the fact that the letters of the Polish alphabet are not allowed in documents indicating the civil status of Lithuanian nationals. In another context, a person might suffer discrimination if his minority ethnic origin were revealed by documents indicating civil status. [38] I would point out the fact that indirect discrimination consists in the application of an apparently neutral criterion which would place a given group of persons at a particular disadvantage in comparison with other persons. Member States are forbidden from applying such a criterion unless they are able to provide appropriate justification. The interpretation of European Union law which is given must not have the consequence that the two situations described above, which are alternative and mutually exclusive, may be invoked against a Member State as being discriminatory.

64. The specific problems evoked by Ms Runevič-Vardyn and Mr Wardyn are the result of the *differences* in the spelling of their forenames and surnames in the Lithuanian and Polish documents indicating civil status, and not of the spelling used as such. Indeed, there is no doubt as to the existence of the union between 'MALGOŽATA RUNEVIČ-VARDYN' and 'LUKASZ PAWEL WARDYN', which are entered in capitals, in the light of the Lithuanian marriage certificate relating to them. The problem raised is unrelated to the elements of discrimination envisaged by Directive 2000/43.

65. In my view, at the present time, the Court cannot accept that, in cases in which the existence of the marriage is important with regard to access to goods or services, that element may be inferred from an identity between the names of the spouses or may be precluded in the absence of such identity. In the present case, as in every equivalent situation, only the marriage certificate or a similar document indicating civil status may establish beyond doubt that there is a matrimonial link.

66. For the sake of completeness, I would point out that if the Court were to accept a broad concept of the scope of Article 3(1)(h) of Directive 2000/43 as including the indirect effects which the legislation governing the spelling of forenames or surnames to be used in documents indicating civil status may have in relation to access to goods and services,

38 — Thus, Ms Runevič-Vardyn's Polish origin is entered on the Lithuanian passport issued to her in 2002, but that reference could be regarded as a cause of discrimination in certain Member States.

that would raise problems for the application of that directive in the case of undertakings which clearly come within its scope. For example, if the definition of indirect discrimination based on ethnic origin were attributed to the restrictions concerning the use of letters in documents indicating civil status, such an interpretation would give rise to the prospect of allegations of discrimination against all suppliers of services who, owing to technical or normalisation restraints, are obliged to use only a rather limited selection of graphemes and marks in the documents and communications which they issue in respect of their customers. [39] To describe such practices as having a discriminatory effect, even potentially, seems to me excessive and unjustified.

67. In the light of the foregoing, I take the view that national legislation such as that at issue in the main proceedings does not come within the substantive scope of Directive 2000/43.

39 — For example, according to Document n° 9303 of the International Civil Aviation Organisation, the marks permitted in the area of machine reading of travel documents are limited to numbers and the capital letters of the English alphabet included in Appendix 8 to that document, the other letters or diacritic marks being transcribed or transliterated according to the standard included in Appendix 9 (see *Machine readable travel documents* on the ICAO Internet site: www2.icao.int). Airline companies usually apply the same principle with regard to the names of passengers on plane tickets.

3. The questions relating to discrimination on grounds of nationality and to citizenship of the European Union

68. Under Article 17 EC, every person holding the nationality of a Member State is a citizen of the Union, from which status are derived the rights conferred and the duties imposed by the EC Treaty, including the right to invoke non-discrimination based on nationality as provided for in the first paragraph of Article 12 EC and the freedom to move and reside in the Member States established in Article 18(1) EC, in all situations which come within the scope *ratione materiae* of European Union law. [40]

(a) The interpretation of Article 12 EC in the light of the different requests for amendment of documents indicating civil status

69. In the light of the circumstances of the main proceedings, I think it is necessary, in order to reply to the third and fourth questions, to distinguish the three kinds of requests made by the applicants in the

40 — With regard to the combination of these different provisions, see Case C-499/06 *Nerkowska* [2008] ECR I-3993, paragraph 21 et seq., and Case C-135/08 *Rottmann* [2010] ECR I-1449, paragraph 43 et seq.

main proceedings, namely: (a) Ms Runevič-Vardyn's request for an amendment to her birth certificate, (b) Mr Wardyn's request relating to the marriage certificate, and (c) the request concerning Ms Runevič-Vardyn's married name as entered on the latter certificate.

70. As regards the forename and maiden name on Ms Runevič-Vardyn's passport issued by the Civil Registry of the City of Vilnius in accordance with Lithuanian legislation, I consider that this situation does not come within the scope of the provisions of Article 12 EC. There can be no discrimination on grounds of nationality since Ms Runevič-Vardyn is a national of the Member State the legislation of which is at issue. Furthermore, I note that the wording of that article in the German language, [41] which has not changed since the Treaty of Rome in 1957, shows that discrimination on grounds of nationality refers to discrimination between the nationals of different Member States, not to discrimination based on affiliation to an ethnic minority.

71. With regard to the request for amendment of the marriage certificate made by Mr Wardyn, I would point out that this does not relate to his own surname, which was entered without alteration of its original form, but to his forenames, which were entered in a Lithuanian form ('Lukasz Pawel') that is to say, without the diacritic marks ('Łukasz Paweł') which are present in the language of the State in which he was born and of which he is a national, namely the Republic of Poland. Furthermore, Mr Wardyn expresses the view that he has personally suffered discrimination on the basis of his Polish nationality since, unlike Lithuanian nationals who marry, he was not given the opportunity to pass on to his wife his authentic surname, that is to say, 'Wardyn', since this was written in the Lithuanian form 'Vardyn' in regard to his wife.

72. In the light of that situation, the applicability of Article 12 EC is largely accepted by the parties which have submitted observations to the Court, a position which I support. Mr Wardyn, a national of the Republic of Poland, entered into a transborder marriage by marrying in the Republic of Lithuania a national of that latter Member State. Furthermore, he currently resides, with his wife and the child of their marriage, outside the respective territories of Lithuania and Poland, namely in the Kingdom of Belgium, where he claims to have encountered difficulties in view of the discrepancy between his surname and that given to his wife by the Lithuanian authorities.

73. As regards the interpretation of the requirements imposed by Article 12 EC, only the Republic of Lithuania and the Czech Republic express the view that that provision does not preclude legislation such as that

41 — 'Unbeschadet besonderer Bestimmungen der Verträge ist in ihrem Anwendungsbereich jede Diskriminierung aus Gründen der *Staatsangehörigkeit* verboten' (emphasis added).

at issue in the main proceedings. I take the opposite view, for the reasons which I shall develop below. First, I would point out that indirect discrimination based on nationality, which therefore infringes Article 12 EC, seems to me to have been practised against a citizen of the European Union who decided to marry in a Member State other than that of which he is a national and who, for that reason alone, suffered an amendment to his original forenames in his marriage certificate.

74. On the other hand, in my view, no discrimination can occur where a national of a Member State has been deprived of the opportunity to pass on to his wife his surname in its original form, since such an alleged 'right' seems to me to be incompatible with the principle of equality between the sexes which is enshrined in, inter alia, European Union law. [42] Any person, man or woman, who marries must have the choice from among various possibilities: either to keep his/her surname, or to adopt the surname of his/her spouse, [43] or to adopt a composite name where this opportunity is given by the legislation applicable to that marriage. Although it is true that Ms Runevič-Vardyn had that option, [44] Mr Wardyn, on the other hand, cannot demand the power to give her his surname.

75. I take the view that, in this case, the general principle of equal treatment is infringed since Lithuanian nationals, who usually have a forename and a surname spelt in accordance with the Lithuanian language, are better treated than the nationals of other Member States who have names with letters or diacritic marks which are unknown in that language. [45] The question arises, therefore, whether such an infringement, which may constitute indirect discrimination on grounds of nationality, is nevertheless objectively justified by a legitimate aim and by proportionate means of attaining the aim thus pursued.

42 — See the judgment of the European Court of Human Rights in *Losonci Rose and Rose* v *Switzerland*, cited above, paragraph 47, which states that 'a consensus is emerging within the Council of Europe's Member States as regards equality between spouses in the choice of family name and, at international level, the activities of the United Nations regarding equality between the sexes are heading towards recognition of the right of each married partner to keep his or her own surname or to have an equal say in the choice of a new family name'.

43 — Since 1978, the Committee of Ministers of the Council of Europe has adopted Resolution (78) 37 recommending that the Member States of that Council eradicate all discrimination between men and women in the legal regime of surnames, and Recommendation 1271 (1995) (see http://assembly.coe.int).

44 — I shall return to Ms Runevič-Vardyn's situation with regard to her married name in connection with the interpretation of Article 18 EC.

45 — I would point out that if there is no differentiation, there can be no discrimination. See, inter alia, Joined Cases C-102/98 and C-211/98 *Kocak and Örs* [2000] ECR I-1287, paragraph 52 et seq., concerning the entry of a date of birth in the civil status registers.

76. The legitimate aims which might usefully be invoked in support of the contested legislation are those of ensuring the protection of the official language, for the purposes of safeguarding national unity and preserving social cohesion.

77. In that regard, reference should be made to the case-law of the European Court of Human Rights in this area, which must inevitably be taken into account, [46] *a fortiori* because it is apparent from the explanations relating to the Charter of Fundamental Rights [47] that the rights guaranteed by Article 7 of the Charter correspond to those guaranteed by Article 8 of the ECHR and that the limitations which may legitimately be imposed on them are those allowed by Article 8(2) of that Convention. [48]

78. Admittedly, the ECHR contains no provision expressly stating a person's right to protection for his name and personal identity. Nevertheless, the European Court of Human Rights, adopting a broad interpretation of Article 8 of the ECHR, has held that an individual's name does concern his or her private and family life since it constitutes a means of personal identification and a link to a family. [49]

79. I note that the European Court of Human Rights has been seised of a case similar to the present case in the main proceedings, in which the applicant challenged the 'forced Latvianisation' of his surname. The Court rejected this application as manifestly unfounded, holding that, although the practice at issue, which consisted in the transliteration of surnames, might cause interference in the private and family life of the person concerned, it nevertheless did not infringe the requirements of the ECHR because that practice, first, was established by law, secondly, was intended to achieve one or more legitimate aims under Article 8(2) of the ECHR and, thirdly, was necessary in a democratic society to attain them. [50] That Court has recently

46 — With regard to the duty of the Member States to protect the fundamental rights when they implement European Union Law, see Case C-117/06 *Möllendorf and Möllendorf-Niehuus* [2007] ECR I-8361, paragraph 78 and the case-law cited therein.

47 — OJ 2007, C 303, at p. 20.

48 — See points 9 and 10 of the Opinion of Advocate General Sharpston in Case C-208/09 *Sayn-Wittgenstein*, pending before the Court..

49 — European Court of Human Rights, judgments in *Burghartz* v *Switzerland* of 22 February 1994 (series A nº 280-B, paragraph 24), *Stjerna* v *Finland* of 25 November 1994 (series A nº 299-B, paragraph 37), *Guillot* v *France* of 24 October 1996 (*Reports of judgments and decisions* 1996-V, paragraph 21) and *Daróczy* v *Hungary* of 1 July 2008 (application nº 44378/05, paragraph 32). See also the Opinion of Advocate General Jacobs in *Konstantinidis*, cited above, points 33, 40 and 41, and also in *Garcia Avello*, point 66.

50 — European Court of Human Rights, judgment in *Kuharec alias Kuhareca* v *Latvia* of 7 December 2004 (application nº 71557/01).

held [51] that, in that area, it was necessary to consider essentially the justification given by the authorities and accepted by the national courts, in order to assess whether the 'need' for the limitation imposed on the right relating to private and family life was convincingly established.

80. In my view too, the Member States are not actually prohibited by European Union law from imposing rules governing the spelling of forenames and surnames designed to ensure respect for the national language. I note that, according to Article 4(2) of the Treaty on European Union, the Union respects the national identity of the Member States.

81. However, the essential question is to determine whether the Lithuanian legislation complies with the principle of proportionality in relation to the objective of protecting the national language which is pursued. [52]

82. The Estonian Government expresses the view that the requirements relating to means which are both appropriate and necessary are fulfilled by a system which includes measures guaranteeing, in practice and without great inconvenience, the combination of name forms and the possibility of recovering the original form.

83. Furthermore, the Lithuanian Government points out that it has placed before the Lithuanian Parliament a draft law designed to make it possible to write the surnames and forenames of certain categories of persons using not only the characters of the official language, but also other letters in the Roman alphabet (with or without diacritic marks). [53]

84. These elements show that it is possible to take a more moderate route than that followed in the legislation at issue in the main proceedings and that the means currently used to attain the objectives pursued by the Republic of Lithuania are disproportionate.

85. In that regard, ICCS Convention No 14 [54] may, in my view, be used as a source of useful inspiration for the interpretation of the EC

51 — European Court of Human Rights, judgment in *Kemal Taşkin and Others* v *Turkey* of 2 February 2010 (applications nos 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05 and 45609/05, paragraph 49).

52 — In that regard, I note that the Constitutional Court of the Republic of Lithuania (Konstitucinis Teismas) gave a judgment, on 21 October 1999, according to which, on the passports of citizens of the Republic of Lithuania, the forename and surname must be written in the national language, on the ground that the insertion of foreign letters might be detrimental to national interests, in that not only the constitutional principle of the official language but also the proper functioning of governmental, municipal and other institutions, undertakings and organisations would be jeopardised. Subsequently, in a judgment given on 6 November 2009, interpreting the previous one, the Constitutional Court held that a reference to a name in its original form is acceptable under the heading 'other entries' of a Lithuanian national's Lithuanian passport, where that person so wishes.

53 — Draft law on the spelling of surnames and forenames in official documents (Vardų ir pavardžių rašymo dokumentuose įstatymo projektas), presented on 14 January 2009 (n° XIP-1644). The draft was rejected by the Lithuanian Parliament. Work continues, on the other hand, with regard to a draft law (n° XIP-1668) presented by a group of parliamentarians, the content of which is less liberal (see the Internet site www.lrs.lt).

54 — An intergovernmental organisation created in 1950, composed of 16 European States, the International Commission on Civil Status has the task inter alia of drawing up conventions having binding force, aimed at harmonising the provisions in force in the Member States on matters relating to the status and capacity of persons, the family and nationality.

Treaty because that Convention expresses an advanced standard of international law with regard to the recording of the forenames and surnames of foreigners in civil status registers. [55]

86. In particular, Article 2 of ICCS Convention No 14 provides that, where a record is to be made in a civil status register by an authority of a Contracting State and there is produced for that purpose a document indicating civil status or some other document that shows the forenames and surnames written in the same characters as those of the language in which the record is to be made, those identifying elements must be reproduced literally, without alteration or translation, also including diacritic marks, even if such marks do not exist in that language. The explanatory report annexed to that Convention states, in respect of that article, that '[t]he literal reproduction rule also applies to diacritic marks' and that these 'must be reproduced, even if they do not exist in the language in which the record is to be made. If the record is typewritten, the diacritic marks are to be added by hand if necessary'.

87. In the light of the foregoing, I take the view that, under the first paragraph of Article 12 EC, the record made by the authorities of a Member State of the identification details of nationals of other Member States should be literal and include the use of diacritic marks accepted in those States.

(b) The interpretation of Article 18 EC in the light of the different requests for amendment of documents indicating civil status

88. Article 18(1) EC confers on every citizen of the Union the right, with direct effect, [56] to move and reside freely within the territory of the Member States.

89. The previous case-law of the Court with regard to the rules governing the recording of forenames and surnames in documents indicating civil status may be summarised briefly as follows. [57] It must be reiterated that only the Member States have competence in this matter and that an obstacle to the freedom of movement provided for by Article 18 EC is established only if it is shown that serious disadvantages have arisen. The possible justification for such an obstacle implies, on the one hand, the existence of legitimate aims relating

55 — The preamble to that Convention states that its objective is to ensure 'uniformity in the recording of surnames and forenames in civil status registers'.

56 — Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 94.

57 — For further details, see the Opinion of Advocate General Sharpston in *Sayn-Wittgenstein*, point 11 et seq., and the case-law cited therein.

to considerations of public policy and not merely administrative facilities and, on the other hand, measures which are proportionate to the objective thus pursued. [58]

90. In the present case, as regards Ms Runevič-Vardyn's situation concerning her forename and surname on her birth certificate, I take the view, as do most of the parties who have submitted observations, that it falls within the scope of the provisions of Article 18 EC because the person concerned has indeed made use of the rights provided for in that provision, by settling and working in Member States other than that from which she comes.

91. Ms Runevič-Vardyn maintains that it follows clearly from the judgments in *Garcia Avello* and *Grunkin and Paul* that the Lithuanian legislation has a disproportionate detrimental effect on her freedom of movement as a citizen of the Union. She claims that, if forenames and surnames of non-Lithuanian origin are transcribed with Lithuanian characters, a new personal identity is created, which prevents persons residing in other countries of the Union, such as herself, from being identifiable by their authentic forenames and surnames and causes them to face serious problems in their private and professional life.

58 — Similarly, the European Court of Human Rights takes the view that the inconvenience suffered owing to rules relating to names must be of a certain degree of seriousness or significance in order for a failure to respect the right to private life to be established (*Stjerna* v *Finland*, paragraph 42).

92. I take the view, on the contrary, as regards Ms Runevič-Vardyn's birth certificate, that the disadvantages to which she refers are unfounded, since her forename and maiden name were given to her in the Member State in which she was born, they have not changed since her birth and they appear in that precise form on, among other things, her passport. Moreover, the provisions of the legislation at issue are not less favourable to certain nationals simply because they have subsequently exercised their freedom to move and to reside in another Member State.

93. As regards Mr Wardyn's situation concerning his forenames on the marriage certificate, the parties which have submitted observations unanimously take the view, as I do, that Article 18 EC is applicable.

94. I concur with the view expressed by the Commission where it emphasises, referring to the judgment in *Konstantinidis*, that everything must be done to ensure that the forenames and surnames of all the citizens of the European Union are firmly and permanently established, in order to enable them freely to exercise the rights attaching to citizenship of the European Union.

95. The Lithuanian Government states that in documents such as residence permits or documents indicating civil status (birth, marriage and death certificates) which are issued in Lithuania to nationals of other Member States, their forenames and surnames are

written using the letters of the Roman alphabet and observing the spelling used in the State of origin, including the letters 'w', 'x' and 'q' which do not feature in the Lithuanian alphabet, but not, however, using diacritic marks.

96. In my view, such legislation limits only in part Mr Wardyn's right to move and reside freely in another Member State. In the daily life of international trade, diacritic marks are frequently omitted, above all because computer systems permit the use only of the English alphabet, as I have already mentioned. That applies not only to plane tickets but also often to digital forms or credit cards. For a person who does not master a foreign language, the meaning of diacritic marks is often unknown and he may not even notice them. I think it is unlikely — and I speak from personal experience here — that the omission of diacritic signs alone may make it necessary to justify the reasons why a person has a dual identity. I therefore consider that it is inconceivable that any real and serious disadvantage would result from such an omission.

97. By contrast, I think that the refusal to use, in documents indicating the civil status of nationals of other Member States, letters in the Roman alphabet which do not exist in the national alphabet is liable to cause a sufficiently serious disadvantage to those nationals to dissuade them from exercising their freedom of movement. However, that does not seem to me to be the case in Lithuania since, according to the information provided by the Lithuanian Government, the surnames of nationals from other Member States may be written with those letters, as happened in the present case, where Mr Wardyn's surname was written with a 'W' on the Lithuanian marriage certificate.

98. As regards Ms Runevič-Vardyn's situation concerning her married name on her marriage certificate, Article 18 EC is, in my view, applicable and may be invoked against legislation such as that at issue in the main proceedings, a view also shared by most of the parties which have submitted observations.

99. The Polish Government emphasises that the amendment of the transcription of a forename or surname has a seriously detrimental effect on the rights of the persons whose forenames or surnames are amended. Civil status records and documents are used not only in the territory of the State which has amended them in accordance with the rules of its language, but also in the territory of all the other Member States of the European Union and beyond. It considers that a citizen of another

Member State who is familiar neither with the letters of a language nor with the rules for reading them may be unable to ascertain whether two names appearing on two separate documents are in fact one and the same name. Nevertheless, as I have already stated, I consider that the Court cannot base its arguments on the premise that the family connection between spouses is either presumed, or precluded, merely because they bear identical or different surnames.

100. In order to justify such an obstacle, the Lithuanian Government invokes the interests and traditions of the Lithuanian language. It is true that the protection of the national language may constitute an objective consideration of public interest within the meaning of European Union law. However, as Advocate General Jacobs pointed out when referring to the case-law of the European Court of Human Rights, [59] the wide margin of appreciation enjoyed by the Member States in the context of the spelling of forenames and surnames must not have the effect of placing a disproportionate limit on the right of European Union citizens to move and reside freely in all the Member States. Indeed, those citizens, whichever Member State they are from, must not be prejudiced merely because they exercise that right. [60] In the present case, Ms Runevič-Vardyn is deprived of the right, accorded to other Lithuanian nationals, to bear the name of her spouse in a form true to the original spelling, owing to the fact that she married a national of another Member State whom she met while exercising her right to freedom of movement.

101. In my view, the Lithuanian provisions do not constitute the adequate and necessary means of achieving the objective of protecting the national language. Other solutions which are less restrictive of the rights of the person concerned are possible. It need only be established that the Lithuanian legislation already allows letters which do not exist in the national language to be used in documents indicating the civil status of a national of another Member State, such as Mr Wardyn, to infer that the protection of that language would not be seriously jeopardised by the use of the letter 'W' also in the record of the surname borne by his wife.

59 — Opinion in *Garcia Avello*, point 66 et seq.

60 — Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraphs 28 to 31: 'In that a citizen of the Union must be granted in all Member States the same treatment in law as that accorded to the nationals of those Member States who find themselves in the same situation, it would be incompatible with the right of freedom of movement were a citizen, in the Member State of which he is a national, to receive treatment less favourable than he would enjoy if he had not availed himself of the opportunities offered by the Treaty in relation to freedom of movement. Those opportunities could not be fully effective if a national of a Member State could be deterred from availing himself of them by obstacles raised on his return to his country of origin by legislation penalising the fact that he has used them.'

V — Conclusion

102. In the light of the foregoing considerations, I propose that the Court should answer the questions referred by the Vilniaus miesto 1 apylinkės teismas as follows:

'Article 2(2)(b) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin must be construed as meaning that it is not applicable to national provisions such as those at issue in the main proceedings.

In the context of the main proceedings, the first paragraph of Article 12 EC, which forbids discrimination on grounds of nationality, must be construed as not precluding a Member State from providing in its legislation that the forename or surname of one of its nationals may be written in documents indicating civil status using only the characters of the national language and not employing diacritic marks, ligatures or other graphic modifications to the letters of the Roman alphabet which are used in other languages. On the other hand, Article 12 EC does preclude such a practice in respect of a national of another Member State.

In the context of the main proceedings, Article 18(1) EC, which provides that every citizen of the European Union has the right to move and reside freely within the territory of the Member States, must be construed as precluding a Member State from providing in its legislation that the forename or surname of a national of another Member State or the married name which one of its nationals married to a national of another Member State has chosen to bear can be written in documents indicating civil status using only the characters of the national language. On the other hand, that article does not require a Member State to employ diacritic marks, ligatures or other graphic modifications to the letters of the Roman alphabet which are used in other languages.'