A crucial issue which will now also have to be pursued concerns whether the judgment is restricted to equal pay claims, or whether on the other hand it is intended to cover sex discrimination cases in employment generally. Although in many places the language used is that of equal pay, the logic behind the reasoning of both the Court and the Advocate General appears to extend to all instances of sex discrimination. If this is indeed the case, there would seem to be a serious conflict between Community law and the UK's definition of indirect discrimination; s.1(1)(b) of the Sex Discrimination Act 1975 obliges a claimant to identify and prove a mandatory "requirement or condition" which produces the discrimination, whereas Community law appears to accept that this is just one of many ways in which a "prima facie" case of discrimination can be established.

Evelyn Ellis*

1. Background to the case

Christos Konstantinidis, or rather Χρήστος Κωνσταντινίδης, is a Greek national who has established himself in Germany as a self-employed masseur and assistant hydrotherapist. He is engaged in a Kafka-like dispute with the German authorities: they have decided to change his name.

When Mr Konstantinidis married a German national in 1983, his name was entered in the local marriage register as "Christos Kostadinidis", i.e. with a [d] instead of an [nt] in his surname. In 1990 he applied to the registry office for the entry of his surname to be rectified and be brought into conformity with his passport. As German legislation requires that the name entered in the marriage register corresponds to the name on the birth certificate, the authorities decided to have Mr Konstantinidis' Greek birth certificate translated by a qualified translator. The outcome was not quite what Mr Konstantinidis had expected. On the contrary, to his horror the translator decided that his name should be spelled as "Hrestos Konstantinides". This result had been achieved by applying a system for transliteration developed by the International Organization for Standardization (ISO). The use of this standard was in accordance with a 1973 treaty, to which both Germany and Greece are parties.

1. Note that the first name has changed almost completely, and that the surname now ends with a [e] instead of a [i]. This name was to be written with a horizontal bar written above the letter [e] in the first name and above the [o] and [e] in the surname, but no wordprocessor seems to be sophisticated enough for the exigencies of the translator.
Subsequently, the competent authorities not only refused the request of Mr Konstantinidis to have the entry in the marriage register changed, but also insisted that it should be brought into conformity with the newly obtained transliteration. Mr Konstantinidis objected strongly to these developments and applied to the Amtsgericht Tübingen. This court considered that the rights of Mr Konstantinidis under Community law might be infringed if he were compelled to write his name in accordance with the ISO standard, and therefore decided to refer the matter for a preliminary ruling to the European Court of Justice.

2. The Judgment

2.1 Observations submitted to the Court

In their observations submitted to the Court, the German Government sought to defend the approach of the authorities. They stressed the importance of a fixed system of transliteration as the only means to ensure that Greek names would be transcribed in a uniform way throughout the other Community Member States. In fact, the free circulation of persons was facilitated by the application of the ISO standard.

The Greek Government on the other hand agreed to the importance of a uniform system of transliteration, but on the other hand objected to the ISO standard which was actually applied by Germany. Another standard, developed in Greece and used in international organizations such as NATO and the United Nations, produced much more acceptable results. Greece did not, by the way, offer an explanation as to why it adhered to a convention prescribing the use of the very ISO standard it now rejected.

The Commission did not comment on the ISO standard as such, and even admitted that its own translation services did not follow a fixed system for transliteration. According to the Commission, it could be contrary to Community law to force a person to adopt a transcribed name which distorts his original name. This would however only be the case if the individual concerned could show actual prejudice resulting from the distortion.

During the hearing, Mr Konstantinidis submitted his argument “with a simple eloquence and brevity which many professional advocates would do well to emulate”, according to Advocate General Jacobs: the new transliteration was “an insulting, unpronounceable parody of his name, which is offensive to his religious sentiments”.

2.2 Opinion of Advocate General Jacobs

In his Opinion, delivered on 9 December 1992, Advocate General Jacobs obviously sympathizes with the complaints of Mr Konstantinidis. By way of introduction, he notes that the ISO standard “in numerous respects [...] is bizarre and inaccurate” and that as a consequence of its application indeed “some names will be distorted beyond recognition”.

Turning to the question whether Community law is violated, the Advocate General observes that the German transliteration rules are much more likely to be applied to Greek nationals than to nationals of Germany or any other Member State. Mr. Konstantinidis is thus the victim of indirect (or covert) discrimination. Since he went to another Member State in the exercise of the rights conferred on him by the free movement provisions of the EEC Treaty, Mr Konstantinidis is “in a situation governed by Community law”. Following the Cowan judgment, it is obvious that his situation falls within the scope of application of the EEC Treaty, enabling him to invoke the prohibition of discrimination embodied in Article 7.

It is unclear from the facts to what extent Mr Konstantinidis actually suffered prejudice resulting from the obligatory transliteration – or deformation – of his name. Unlike the Commission however, the Advocate General feels that question is without any relevance. As a consequence of the authorities’ decision, Christos Konstantinidis may be compelled to call himself “Hrestos Konstantinides” when dealing with the German authorities or with firms from which he

3. Now the Treaty on European Union has finally entered into force, the relevant provision would be Article 6 EC. To the present case, however, the “old” EEC Treaty was of course applicable.
himself buys goods or services. "The inconvenience and unpleasantness thus inflicted on him are sufficient to entitle him to invoke the prohibition laid down by the Treaty". The Advocate General is unable to see any objective justification for the difference in treatment. While there is of course every justification for requiring the names of Greek migrant workers to be written in Roman characters in the other Member States, "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 conclusion is that the treatment of Mr Konstantinidis is contrary to Articles 7 and 52 EEC.

That seems to be the fatal blow to the German practice, but the Advocate General has another weapon in his armoury. The treatment of Mr Konstantinidis amounts to a violation of his fundamental rights, notably the right to respect for a given name and the right to physical and moral integrity, which can be found in various human rights treaties and constitutions of Member States. This issue should not be taken too lightly. "To strip a person of his rightful name", the Advocate General submits, "is the ultimate degradation". The consequence he attaches to this conclusion is of fundamental importance. Even assuming that the treatment of Mr Konstantinidis is not discriminatory, the sole fact that his fundamental rights have been violated constitutes an infringement of Article 52:

"In my opinion, a Community national who goes to another Member State as a worker or self-employed person under Articles 48, 52 or 59 of the Treaty is entitled (...) 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 europaeus sum' and to invoke that status in order to oppose any violation of his fundamental rights".

The Advocate General concludes by discussing three possible objections to this proposition, i.e. that it would be inconsistent with existing case law, that it would lead to "reverse discrimination" against nationals of the host state and that there would be an overlap between the Court of Justice and the European Court of Human Rights in Strasbourg. Not surprisingly perhaps, he finds none of them convincing.

2.3 Judgment of the Court

After reformulating the question put, the Court referred to its previous finding that 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 the grounds of nationality arising from legislation, regulations or national practices: see Case 197/84, Steinhauser [1985] ECR 1820. The Court found that it was 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.

The Court noted that in this connection "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 by administrative regulation, and in accordance with the rules of international conventions which it has concluded concerning matters of civil status." It stated:

"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 right of establishment conferred upon him by that Article. 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.

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.

3. Comments

This case may raise a feeling of déjà vu with any reader who has invested a substantial part of his or her schooldays in the study of ancient Greek. At the same time, a number of interesting questions of Community law are involved.

3.1 Competence of the Court

Is the Court competent to deal with the case of Mr Konstantinidis? At first sight, the way in which the Member States organize the registration of their populations clearly falls outside the scope of Community law. Likewise, the system chosen to transcribe Greek names is a matter for the national authorities alone to decide. Indeed, the Court is careful to stress the competence of the Member States to adopt rules in this respect (para 14). The judgment certainly does not develop a general rule that an individual is free to choose any name of his or her preference or to change it freely, although this may of course happen to be the situation in some States. Nevertheless, there is a limit the Court imposes on national sovereignty in this respect: the freedom of Article 52 should not be impeded (para 15). The Court obviously considers itself competent to examine whether this border has been crossed or, more precisely, to examine where exactly this border lies. Of course, the situation would be similar if Articles 48 or 59 were invoked.

The comparative lawyer will note that the two major legal systems which give shape to the "European public order" – the Community legal order and the European Convention on Human Rights – follow the same approach with respect to issues they do not explicitly regulate. As the Convention, for example, does not contain a general right of admission into or residence in the territory of the States parties for aliens, the former remain free to regulate immigration. However, their immigration policy should not lead to violations of the Convention, notably the prohibition of torture and inhuman or degrading treatment or punishment (Article 3) and the right to respect for family life (Article 8).

3.2 The scope of the protection offered by the Court

When is the freedom of Article 52 impeded? Basically, the Court follows the approach of the Commission. Community law is violated if a more or less comparable approach Case 16/78, Choquet, [1978] ECR 2300: although there are (anno 1978) no Community rules relating to the issue or mutual recognition of driving licences and the matter falls in principle in the competence of the national authorities, national rules may influence the freedom of movement for workers. Insistence on a driving test which clearly duplicates a test taken in another Member State, for example, might prejudice indirectly the rights which Arts. 48, 52 and 59 EC guarantee and consequently be incompatible with the Treaty.

6. See already Appl. No. 434/58, X. v. Sweden, Yearbook II (1958–1959), p. 372, where the Commission held that "a State which signs and ratifies the European Convention ... must be understood as agreeing to restrict the free exercise of its right under its International law, including the right to control the entry and exit of foreigners, to the extent and within the limits of the obligations which it has accepted under that Convention". See for more recent authorities: European Court of Human Rights, Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 96, paras. 59–60; Berrehab judgment of 21 June 1988, Series A no. 138, para 28 and the Soering judgment of 7 July 1989, Series A no. 161, para 85.
(a) the name of Mr Konstantinidis is distorted in the process of transcription, (b) he is forced to use the new name in the exercise of his profession and (c) he consequently runs the risk of confusion of identity on the part of his potential customers. Whether this is actually the case should be determined by the national court on the basis of the facts. The proceedings in Luxembourg do not contain sufficient information to predict what the outcome will be. It is to be noted that Mr Konstantinidis waited for seven years before he requested the authorities to have his registration changed. That may suggest that he did not suffer any actual damage, at least not until he triggered the whole affair.

There is another reason why Mr Konstantinidis and those who share his dislike of the ISO standard may not wholeheartedly welcome the judgment. If it is the risk of confusion of identity which determines whether Community law has been violated, then it is perfectly conceivable that the ISO standard which has been applied by the German authorities will remain in existence. Maybe an exception should be made for Mr Konstantinidis, as an initial mistake was made in respect of his name, but the system as such remains unchallenged. After all, the best way to prevent confusion is to maintain the status quo and to keep a fixed transcription system, as Germany had argued before the Court. Unlike the Advocate General, the Court does not examine the substantive result of a particular transcription system. In the eyes of the Court, the deformation of a name as such is not a violation of Community law.

To put it differently, if Christos had been called Hrestos (or Henry, for that matter) consistently from the moment of his entry into Germany, there might never have been an issue under Community law.

There are more contrasts between the elaborate Opinion of the Advocate General and the terse ruling. Paragraphs 12 and 13 of the judgment contain the only — rather casual — reference to the prohibition of discrimination. The Court does not refer to Article 7 at all. Apparently the potential injury caused by the German practice to the professional activities of Mr Konstantinidis is enough for the Court to assume a possible violation of Article 52 and the question whether there was (indirect) discrimination of Greek nationals can be avoided.8

3.3 Nationals of third States

The Court emphasizes that Community law is applicable to the present case as Mr Konstantinidis is a Greek national who established himself in Germany. Article 52 EEC Treaty imposes, according to the French version of the present judgment, “le respect de l’assimilation des ressortissants des autres Etats membres aux nationaux en interdisant toute discrimination fondée sur la nationalité” (para 12). The ruling will therefore only affect the nationals of the EC Member States as it takes “l’assimilation des ressortissants des autres Etats membres” as leading principle. Although there is no provision in the EEC Treaty which excludes application of the freedom of movement to the nationals of non-Member States, the free movement provisions of the EEC Treaty have been interpreted as applying to “Community nationals” only. Persons coming from third states — unfortunately9 — cannot benefit from the legal protection offered by the Court, as was demonstrated in the Demirel case.10 Likewise, Advocate General Jacobs explicitly reserves

8. See on this matter Arnull, The General Principles of EEC Law and the Individual (1990), at p. 79: “The main area of uncertainty seems to be whether, and if so in what circumstances Article 52 is capable of applying to non-discriminatory restrictions on the right to establishment”.
10. Case 12/86, Demirel, [1987] ECR 3754: “(...) there is at present no provision of Community law defining the conditions in which Member States must permit family reunification of Turkish workers lawfully settled in the Community. It follows that the national rules at issue in the main proceedings did not have to implement a provision
the expression "civis europaeus" (see the quotation above) only for the citizens of the twelve Member States. If the deformation of a person's name is really to be taken very seriously — "the ultimate degradation", in the words of the Advocate General — then as a matter of principle it is hard to see why only Community nationals should be protected against it. It may well be argued that especially nationals of third States run the risk of being confronted with transcription protected against it. It may well be argued that especially nationals of third States run the risk of being confronted with transcription problems. Indeed, the European Convention on Human Rights to which Mr Jacobs refers obliges the States parties to secure "to everyone within their jurisdiction" the rights and freedoms set forth in that instrument. In this respect, the role which the Advocate General envisages for the European Court of Justice to protect the rights enshrined in the European Convention is bound to be imperfect. The introduction of "Community citizenship" — whatever it may mean in practice — through Article 8 EC Treaty (as amended by the Treaty on European Union) will only codify and reinforce the existing inequality under Community law.

3.4 The protection of the fundamental rights of a "Civis Europaeus"

Nevertheless, the approach suggested by the Advocate General would bring about a fundamental change in the existing system of human rights protection in Europe. Basically, the Advocate General contends that any violation of human rights of a migrating Community national should be considered a violation of Community law, as each violation is likely to impede the free movement of persons. Any complaint against the national authorities, when submitted by a migrating civis europaeus, would thus fall within the competence of the Court of Justice and could be brought before it through the procedure of Article 177 EEC Treaty.11

of Community law. In those circumstances, the Court does not have jurisdiction to determine whether national rules such as those at issue are compatible with the principles enshrined in Article 8 of the European Convention on Human Rights.12

This suggestion, revolutionary as its implications may be, does not come out of the blue. It follows from the gradual development of the Court's case law relating to human rights.13 For more than 20 years, fundamental rights have been recognized by the European Court of Justice as forming part of the Community legal order. In developing its case law, the Court limited itself initially to reviewing the human rights conduct of the Community institutions. This aspect of the case law has now been confirmed obliquely in Article F(2) of the Treaty on European Union. However, in recent years the case law has gone rather further. After some hesitation, the Court now ensures that not only the Community institutions, but also the Member States respect human rights where they are acting within the field of Community law. Thus the Court will review measures adopted by the Member States in implementing Community law and even national measures which, in one way or another, fall within the scope of Community law.14 The question to be solved is, of course, what matters fall within the scope of Community law. It is very hard, if not impossible, to give a general answer to that question, the more so since the Court has never defined the elements which are to be taken into account when determining the scope of Community law. For the purpose of this note, it may suffice to observe that the Advocate General is prepared to draw a rather wide line: as soon as a civis europaeus uses his freedom of movement, almost anything that happens to him is a matter of Community law.15


11. This would also apply, as Mr Jacobs explicitly stated, if the treatment of the civis is not discriminatory. See note 8 supra and, for an opposing view, S. Hall, "The European Convention on Human Rights and Public Policy Exceptions to the Free Movement of Workers under the EEC Treaty", in (1991) EL Rev., 473.
12. In many respects the Opinion echoes the Opinion of A.G. Trabucchi in Case 118/75, Watson & Belmann, [1976] ECR 1207 and Weiler, "The European Court at a Crossroads: Community Human Rights and Member State Action", in Capotorti et al. (Eds.) Du droit international au droit de l'intégration: liber amicorum Pierre Pescatore (1987), pp. 821—842. This is not the place to refer to all relevant case law and literature relating to this development. Suffice it to mention one recent review by F.G. Jacobs: "The Protection of Human Rights in the Member States of the European Communities: The Impact of the Case law of the Court of Justice", in J. O'Reilly (Ed.), Human Rights and Constitutional Law: Essays in Honour of Brian Walsh (Dublin, 1992), pp. 243—250. I am convinced that this article should be seen as the Advocate General's prelude to his Opinion in the Konstantinidis case.
14. See para 44 of the Opinion: "It cannot be said that the regulations at issue in the
Thus the proposal of Mr Jacobs can be seen as yet another expansion of the human rights case law of the Court of Justice. But in the background there may be another explanation. It has been argued that continuing integration and migration are bound to discourage in the longer run any national differences in legal regimes. A Member State which has a less attractive environment (in legal and socio-economic terms) to offer will simply fail to attract investments or qualified workers. The present case and the way it is perceived by the Advocate General may well serve as an illustration of this thesis. Respect for human rights (or the lack of it) will obviously influence potential migrants in their decision whether or not to move to another Member State. Thereby, the way in which the Member States treat the persons within their jurisdiction is inherently a matter of relevance to the Community. Whether it is also, from a legal point of view, a matter within the competence of the Court is another issue.

This issue is, however, not yet decided: in the Konstantinidis case the Court completely ignores the human rights dimension and the comments made by the Advocate General. As has been noted above, the Court chooses an economic approach to the case – much as it did in the Grogan case. The German decision to change the name of the present case lie entirely outside the scope of Community law (...). In this respect, he goes further than the Court in Case 222/86, Heylens, [1987] ECR 3727. The fact that Mr Heylens lacked an effective remedy was due to national legislation, but his dispute with the authorities was directly related to his activities as a worker under Article 48. In his annotation, Timmermans said it would certainly go too far to apply the general principles of Community law to national legislation whenever it is relevant to Community law in one way or another (see 1989 AA, 289). The European Parliament is always prepared to adopt a fairly liberal concept of "the scope of Community law". See for the latest developments the Resolution on Respect for Human Rights in the European Community (based on an annual report drafted by MEP De Gucht), O.J. 1993 C 115/178.

15. Cf. Koopmans, arguing that the quality of the legal systems of the Member States will be one of the factors taken into account when decisions on establishment, investments etc. are made: Koopmans, "Concurrente rechtenrechtstelsels", (1992) SFW, 446–450.

16. Or rather the Second Grogan case, Case C-159/90, [1991] ECR I-4685 (the first Grogan case being a staff case which nobody nowadays remembers). The Court had to examine the compatibility with Community law of the Irish prohibition to provide information by way of counselling pregnant women on abortion facilities abroad. It however declined to do so, as in the particular case the information was not distributed on behalf of an economic operator established in another Member State. Thus the link between the distribution of information and the economic activities was considered too tenuous for the prohibition to be capable of being regarded as a restriction within the meaning Article 59 of the Treaty. See Second Grogan case, page I-4740, para 26 and the comments by Curtin in 29 CML Rev., 585–603.


18. The European Convention presupposes that there are many (national) courts involved in its application; but at the end of the day the European Court of Human Rights has the authority to give a binding interpretation of the provisions of the Convention. If an applicant is not satisfied by the application of the Convention by the national courts, he can exhaust local remedies and have his case finally settled by the European Commission and Court of Human Rights. The problem is, however, that this system fails with respect to the European Court of Justice. It is impossible to bring a decision of this Court before the Convention organs as the Community is not a party (yet) to the European Convention. A conflicting interpretation of the Convention by the ECJ can therefore not be rectified. See for an example note 27 infra and accompanying text.

3.5 The right to a name and the Strasbourg case law

What conclusion would the European Commission and Court of Human Rights have reached if the Konstantinidis case had been submitted to them? It is remarkable to note that the Opinion of the Advocate General; extensive as it is, only refers to the European Convention in a very superficial way. Mr Jacobs limits himself to mentioning that dur-
As far as the first provision is concerned, it is hard for the present liberty) and 8 (the right to respect for private life) of the Convention. Nevertheless, Article 8 offers some interesting perspectives. Article 8 does not refer expressly to the right of individuals to respect for their name. Yet the supervisory organs of the European Convention have often been prepared to extend the scope of this provision. In fact, Article 8 was invoked in a series of cases raised by transsexuals. The applicants had undergone gender change treatment but were denied legal recognition of their new sexual identity; it proved, *inter alia*, impossible to have their name adapted to their new appearance. When they brought a complaint before the Strasbourg organs, neither the Commission nor the Court doubted that Article 8 was applicable to these cases, although they were (at least initially) divided as to whether the denial constituted a violation of the Convention. In *B. v. France*, however, the Court agreed with the Commission that “the refusal [of the French authorities] to allow the applicant the change of forename requested by her was a relevant factor from the point of view of Article 8” and that the inconveniences suffered by B. in her everyday life “reached a sufficient degree of seriousness to be taken into account for the purposes of Article 8”. On the basis of the facts of the case the Court considered Article 8 to be violated.

In a recent series of cases, the European Commission of Human Rights was directly confronted with the question of the extent to which the Convention protects the right to respect for a name. For a variety of reasons, individuals had been trying to have their names changed. Having been unable to persuade their national authorities to allow them to do so, they applied to the Commission claiming a violation of Article 8. After some unsuccessful attempts, recently two cases met with


more success. In *Burghartz and Schnyder Burghartz v. Switzerland*, the Commission explicitly held that “the right for private life as enshrined in Article 8 para 1 of the Convention ensures a sphere within which everyone can freely pursue the development and fulfilment of the personality. The right to develop and fulfill one’s personality necessarily comprises the right to identity and, therefore, to a name”. This approach was confirmed in *Stjerna v. Finland*. The Commission observed that in many countries stability in the use of surnames is considered important and agreed that the right to change such names is restricted, but at the same time accepted “that there could be exceptional cases where the carrying of a particular name creates such suffering or practical difficulties that the right under Article 8 is affected”.

It should be noted that all these cases concern individuals who themselves wanted a change of name. In contrast, in the *Konstantinidis* case it was the authorities who decided to impose a new transcription on an existing name — a most obvious interference with the individual’s rights under Article 8. Moreover, in testing whether this interference could be justified under the Convention, the Convention organs would not follow the predominantly economical approach of the European Court of Justice. They would of course examine the extent to which daily inconveniences occur, but they would not narrow the scope of the issue by requiring the applicant to prove any specific injury in the exercise of his

23. European Commission of Human Rights, Appl. No. 16213/90, *S. Burghartz and A. Schnyder Burghartz against Switzerland*, Report adopted on 21 Oct. 1992 (i.e before A.G. Jacobs delivered his opinion in the *Konstantinidis* case), para 47. This analysis was supported by 18 votes to 1. The case was decided by the European Court of Human Rights in Feb. 1994. By a majority of six votes to three, the Court held that Art. 8 was applicable to the case: “As a means of personal identification and of linking to a family, a person’s name concerns his or her private and family life” (at § 24).
25. *Ibid.*, paras. 63–64. As to the merits of the instant case, a majority of the Commission (12 votes to 9) found no violation of Art. 8. The Commission emphasized that as a general rule a right to change one’s surname is not protected by Art. 8 of the Convention. In a recent case (Appl. No. 18806/91, *B. v. the Netherlands*, dec. of 1 Sept. 1993) the Commission declared a similar complaint inadmissible as the applicant did not allege that his family name was causing him any inconveniences and he was at liberty to use the name he wished (his surname combined with his mother’s name) in society.
profession. It can be safely concluded that Mr Konstantinidis would have a very strong case in Strasbourg.\footnote{In this analysis the freedom of religion (Art. 9 of the European Convention on Human Rights) has not been taken into account, although there would be arguments to do so. A.G. Jacobs pointed to the fact that Mr Konstantinidis "owes his name to his date of birth (25 December), Christos being the Greek name for the founder of the Christian - not "Hrestian" - religion" (para 40 of the Opinion).}

In his Opinion in the Konstantinidis case, the Advocate General pays no attention to these developments. Rather, he concentrates on other human rights instruments and the constitutions of some of the Member States like Italy which provide for an express recognition of the right to a name. In doing so, he illustrates that the catalogue of rights protected under Community law is not confined to the enumeration of the European Convention. With respect to Article 8 of the European Convention, he limits his position to the remark 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". As can be derived from the above, this is certainly not a wrong conclusion; but it appears to be over-careful. One cannot escape the impression that Luxembourg was not fully aware of the development of the Strasbourg case law. Seen from this angle, the Konstantinidis case presents another argument for a formal system of judicial cooperation between the European Court of Justice on the one hand and the European Commission and Court of Human Rights on the other.\footnote{See, \textit{inter alia}, M.W. Janis, "Fashioning a Mechanism for Judicial Cooperation on European Human Rights Law among Europe's Regional Courts", in Lawson and De Blois (Eds.), \textit{The Dynamics of the Protection of Human Rights in Europe (Liber amicorum for Henry G. Schermers)}, to appear early 1994.}

\subsection{3.6 The Judgment and the ISO Treaty}

One final question remains. What are the consequences of the judgment for the existing treaty obligations of Germany – and Greece? The application of the ISO standards to the name of Mr Konstantinidis was prescribed by the Convention on the Representation of Names and Surnames in Registers of Civil Status. This rather obscure treaty\footnote{The Opinion of A.G. Jacobs refers to the fact that only seven States (including five EC Member States) have adhered to it; of these States at least Greece, as we have seen, was actually not complying with it.} was concluded in 1973 in the framework of the International Commission on Civil Status in which twelve European States participate. Germany has been a party to the treaty since 1977, but the Konstantinidis judgment now seems to restrict the possibilities for Germany to carry out its commitments under the Convention.

As the treaty dates from 1973, Article 234 EEC Treaty does not apply. Had the Convention been concluded prior to the entry into force of the EEC Treaty, the Community institutions would have been under the duty to permit the Member States to perform the obligations stemming from it.\footnote{See Schermers and Waelterbroek, \textit{Judicial Protection in the European Communities} (5th ed., 1992), p. 103, referring to case 812/79, Burgos, [1980] ECR 2803.} In this respect the Convention differs e.g. from ILO Convention No. 89 (1948) which was at stake in the recent Levy case.\footnote{Case C-158/91, Ministère public et Direction du travail et de l'emploi v. J.C. Levy, judgment of 2 Aug. 1993, nyr.} In this case the Court explicitly confirmed "que l'application du traité n'affecte pas l'engagement de l'Etat membre concerné de respecter les droits des Etats tiers résultant d'une convention antérieure, et d'observer ses obligations correspondantes".\footnote{\textit{Ibid.}, para 12. Cf. Case 10/61, Commission v. Italy, [1962] ECR 1.}

If Germany wishes to prevent Greek nationals from following the example of Mr Konstantinidis by challenging the transcription system in Luxembourg or in Strasbourg, the only solution seems to be either to attempt to have the Convention amended, or to have the ISO standard to which the Convention refers changed – or to denounce it altogether.

\subsection{3.7 Επιλογος}

What's in a name? According to some, it is the very basis of a person's identity. But to others apparently a name provides insufficient information as to its bearer. The Greek Government has for some time been preparing the introduction of a compulsory declaration of religion on
the Greek identity card. The European Parliament has called upon the Greek Government to refrain from this measure, claiming that it would violate "the fundamental rights of the individual".  

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