



Ресурсен център Европа



С подкрепата на
програма "Еразъм+"
на Европейския съюз



11 January 2021

THE CASE „GARCIA AVELO OR GARCIA WEBER“

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Abstract

This case proves that the free movement of people in the European Union is associated with the elimination of a number of additional difficulties that could arise, including the rules on surnames.



What does the surname of a person have to do with European Union law? At first glance, there is no connection. [National law applies to names and the rules for determining them fall within the competence of the EU Member States.](#)

But let us recall that the citizens of the Member States - except for their own countries - are also citizens of the European Union by the Union`s law. In other words, all citizens of European Union countries automatically acquire EU citizenship.

Also, some countries allow so-called dual citizenship. Bulgaria allows her citizens to have more than one citizenship at the same time. For example, a Bulgarian citizen could be a French one too. Dual citizenship is regulated by bilateral agreements between the two countries.

So far, everything seems clear and understandable. However, life sometimes presents different situations in which specific decisions have to be made and this is not always so easy. These situations are connected with the free movement of people in the European Union. Here comes the question - can the name create difficulties for purposes of free movement in the Union? How are the problems of mixed marriages of citizens of different Member States solved? How does European Union law interfere with protecting citizens' rights? Let's try to answer these questions with a real-life situation because analyzing a specific situation always gives reason to be interpreted legal norms.

The case „[Garcia Avelo or Garcia Weber](#)“¹ is a real-life situation. Carlos Garcia Avelo is a Spanish citizen who lives in Belgium. In 1986 he married Isabel Weber - a Belgian citizen. They live in Belgium where their two children - Esmeralda and Diego - are born. Therefore, the children have dual citizenship - a Spanish and a Belgian one.

In accordance with the Belgian legislation, the Belgian birth register shall enter in the birth certificates of the children the surname of their father, i.e., Garcia Avelo, as their last name.

¹ Case C-148/02 Garcia Avello ECLI:EU:C:2003:539

However, as Spanish citizens, the children are registered under the surname "Garcia Weber" at the Spanish embassy in Belgium because due to the Spanish law the children bear the surname of **both parents – this of the father and the mother.**

The parents decide to take action in order to solve the problem.

- At first, they make a request to the Minister of Justice of Belgium to change the children's surnames in the Belgian register from Garcia Avelo to Garcia Weber – as it is in the Spanish law and tradition, where the children are registered with the surname Garcia Weber.

The Minister of Justice rejects the request of the parents because in Belgium children bear their father's surname.

The parents do not accept the decision of the Minister and continue to seek their rights.

- They file a lawsuit in the Belgian court. They invoke **Art. 18** of the Treaty on the Functioning of the EU, which prohibits any discrimination on the grounds of nationality and **Art. 21**, according to which every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the restrictions and conditions laid down in the Treaties..

As the demands of the parents are based on the European Union law, the Belgian court asks the European Court of Justice to interpret and state its opinion on this case.

The European Court of Justice ruled:

- Belgium's refusal to add the mother's surname is an unjustified restriction on the principles of equal treatment and non-discrimination and the free movement of citizens. The discrepancy between the children's surnames in Belgium and Spain, respectively, could cause them serious inconvenience in the future - for example, problems with diplomas obtained in Belgium and issued in a name other than what they have in Spain, problems in issuing marriage documents and for documents for the birth of their children.

- In order to eliminate the difficulties which may arise in recognizing documents issued by one Member State in a surname other than that recognized in the other Member State of which the children are citizens, the Belgian court must authorize them to bear and the mother's surname, as required by Spanish law. In this manner, discrimination will be avoided, equal treatment will be applied and the movement of people embodied in the Treaty on the Functioning of the European Union will be implemented without obstacle.

And that is the story of how Esmeralda and Diego Garcia Avelo became Esmeralda and Diego Garcia Weber.

For EU citizens with dual citizenship, a mismatch in surnames could cause "serious inconvenience" that does not enable free movement. Therefore, the citizenship of the European Union gives parents in cross-border situations, such as Garcia Avelo or Garcia Weber, the freedom to choose which national law applies to their child`s name.

This specific case proves that ensuring the free movement of people in the European Union is associated with the removal of many other additional issues that could arise, including the rules on surnames.

Conclusions:

The rights of EU citizens do not allow any form of discrimination on the grounds of EU citizenship.

Free movement within the Union is one of the fundamental rights that all citizens of the European Union have. It is legally established in the Treaty on the Functioning of the EU, connected to the removal of obstacles and the prevention of difficulties, including the different rules of the Member States concerning surnames.

The rights of EU citizens concerning surnames are part of the right to move and reside freely within the Union and reflect the fundamental values, objectives and principles of EU law.