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In case no. 6184-19, **the Swedish Tax Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following part judgment on 11 June 2021.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the Swedish Tax Agency's appeal.

The question regarding the right to compensation for costs of litigation is to be decided by the Supreme Administrative Court in full session.

BACKGROUND

1. A person may change their surname to a newly formed surname provided, *inter alia*, that the name is not used as the first name of another person and that it cannot be confused with a surname used by someone else or someone else's protected trade name. If these conditions are not met, the person may change their surname only if there are special reasons.
2. AA was born and raised in France and is a French citizen. She has been registered in the population register in Sweden since 2011 and became a Swedish citizen in 2016. At the end of 2015, she applied in France to change her surname to Montclair. In the summer of 2017, her application was granted and her new surname was registered in the population register in France. Thereafter, she applied to the Swedish Tax Agency to change her surname to Montclair also in Sweden.
3. The Swedish Tax Agency decided to reject her application and stated that the name Montclair was used as a first name by a person in Sweden and that it could be confused with the existing company name Montclair AB. Furthermore, the

Swedish Tax Agency was of the opinion that there were no special reasons for granting the application.

4. AA appealed to the Administrative Court in Stockholm which rejected the appeal.
5. The Administrative Court of Appeal in Stockholm granted her appeal there. The court was of the opinion that the name did not have the character of a first name but that there was a risk of confusion with the similar surname, Monclair, which is used by three persons in Sweden, and with the company name Montclair AB. The court noted that there is a significant risk of problems and inconvenience to have different surnames in different countries. In an overall assessment, the administrative court of appeal was of the opinion that the consequences of not allowing AA to change surname appeared to be unreasonable.

CLAIMS, ETC.

6. *The Swedish Tax Agency* claims that the Supreme Administrative Court is to overturn the judgment of the administrative court of appeal and affirm the decision of the Swedish Tax Agency and states the following.
7. The name Montclair is used as the first name of a person in Sweden. In addition, the name is confusable with the surname Monclair, which is used by three persons in Sweden, and with the company name Montclair AB. In order for AA to be able to change to Montclair, there must, thus, be special reasons. The fact that a person has different surnames in different countries cannot in itself be deemed to entail that there are special reasons to acquire a name. Approving a change of the name on account of special reasons would create general exceptions which have not been intended by the legislators.
8. A refusal to approve a change of name constitutes a limitation on the right of citizens of the Union to move freely in accordance with Article 21 of the TFEU if it gives rise to serious inconvenience for the person at administrative, professional

as well as private levels. AA has not shown that there is any concrete risk that the refusal by the Swedish Tax Agency to approve the change of name would give rise to such inconvenience. She has herself chosen to change her surname in France notwithstanding that she resides in Sweden and that she holds both Swedish and French passports by which means she can prove her identity in respect of both surnames.

9. The Swedish Tax Agency is of the opinion that the contrary interests which the rules are intended to protect, i.e. holders of the company name Montclair AB and the persons who use the surname Monclair, outweigh the interests of AA.
10. AA contests grant of the appeal and states the following.
11. She applied to be able to acquire the surname Montclair before she became a Swedish citizen. The reasons were, *inter alia*, that she felt discriminated against both privately and professionally due to her non-French sounding surname and that the surname A is difficult to pronounce and write.
12. The fact that she has two different surnames entails in practice that she has two different identities and this gives rise to serious inconvenience for her both privately and professionally. For example, problems arise when she needs to prove her identity in Sweden in order to receive postal items from France or conduct cross-border banking transactions. When she applies for jobs, problems arise if the name, e.g. in degree certificates, grades and similar documents, differs from the one she provides in the application. When travelling – not the least to and from France – there can be problems regarding both travel documents and insurance.
13. With reference to the Instrument of Government and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, she claims compensation for costs of counsel in the amount of SEK 28,750 in the

administrative court and administrative court of appeal and in the amount of SEK 31,500 in the Supreme Administrative Court.

REASONS FOR THE RULING

The question in the case

14. The question in the case is whether an EU citizen may change their surname to a newly formed surname which has been approved in another country within the EU. The matter further involves the question of whether compensation may be granted for costs of litigation.

Legislation, etc.

15. Section 13, first paragraph of the Personal Names Act (the Names Act) states, *inter alia*, that a person may change their surname to a newly formed surname provided that the conditions of sections 14–19 are met or, otherwise, if there are special reasons. Section 14 states that a person may change to a newly formed surname only if the name is not used as a first name. According to section 15, first paragraph (1) and (6), a person may only change to a surname which cannot be confused with a surname legally used by someone else or someone else's trade name protected in Sweden.
16. Article 21 of the TFEU states that 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 the Treaties and by the measures adopted to give them effect.

The Courts' assessment

The question regarding name

17. The investigation in the case shows, *inter alia*, that three persons in Sweden use the similar surname Monclair and that Montclair is used in a company name, Montclair AB. Accordingly, there is an impediment pursuant to section 15 of the Names Act to granting AA's application for a change of name. Thus, she may change to the Montclair surname only if there are special reasons in accordance with section 13.
18. The following is expressed in the preparatory works of the Names Act (Government Bill 2015/16:180, p. 103) regarding the requirement of special reasons. Special reasons means that there must be reasons of sufficient strength in each individual case to justify approval of a change of name, notwithstanding that there are otherwise impediments to such change. An application of the exemption rule frequently entails that someone else's right must give way. Accordingly, some caution is to be observed and the provision is not intended to create general exemptions from the provisions regarding impediments in the Act. Instead, it is intended to avoid, following a balancing of contrary interests, results which in the individual case do not appear to be reasonable. The assessment of whether there are special reasons to grant an application should be determined following an overall assessment in each individual case.
19. In the assessment of whether there are special reasons for a change of name for an EU citizen, the requirements of EU law must also be considered. In several rulings, the European Court of Justice has stated that it may contravene the right to free movement in Article 21 of the TFEU to apply national legislation if it entails that a person is obliged to use two different surnames in different Member States (see, *inter alia*, *Garcia Avello*, C-148/02, EU:C:2003:539, *Grunkin and Paul*, C-353/06, EU:C:2008:559, *Sayn-Wittgenstein*, C-208/09, EU:C:2010:806, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, *Bogendorff von*

Wolffersdorff, C-438/14, EU:C:2016:401 and *Freitag*, C-541/15, EU:C:2017:432). If there is an exemption rule allowing for a change of name on grounds of “special reasons”, the assessment of whether the requirement is fulfilled shall be exercised in such a way as to give full effect to Article 21 (*Freitag*, paragraphs 40–47).

20. If a person uses different names in different Member States, it is, according to the European Court of Justice, liable to cause serious inconvenience at administrative, professional and private levels since many daily actions require a person to provide evidence of his or her own identity. The inconveniences may consist of difficulties in benefiting in a Member State from the legal effects of documents drawn up in another surname. The person concerned may also encounter difficulties linked to the drawing up of identity documents, certificates or diplomas or when such documents are referred to and may give rise to doubts as to the person’s identity and the authenticity of the documents submitted (see, for example, *Garcia Avello*, paragraphs 36 and 37, *Grunkin and Paul*, paragraphs 23–29, *Sayn-Wittgenstein*, paragraphs 55–70, *Runevič-Vardyn and Wardyn*, paragraphs 73–81, *Bogendorff von Wolffersdorff*, paragraphs 37–46 and *Freitag*, paragraphs 36–38).
21. An obstacle in national law to the freedom of movement of persons may be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions (*Sayn-Wittgenstein*, paragraph 81 and *Bogendorff von Wolffersdorff*, paragraph 48).
22. When a change of name is a deliberate choice made for personal reasons without any connection to situations which fall under family law, the reasons for the change must, according to the European Court of Justice, be taken into consideration. The voluntary nature of a change of name does not, in itself, constitute sufficient reason for a limitation on the right to free movement (*Bogendorff von Wolffersdorff*, paragraphs 52–58).

23. In summary, it may be concluded that the fact that a Union citizen is obliged to use two different names in different Member States may entail an obstacle to the person's right to free movement in accordance with EU law, namely in the event the situation is liable to cause serious inconvenience at administrative, professional and private levels. The fact that a person voluntarily and without connection to situations which fall under family law applies for a name is not in itself a sufficiently strong reason to not grant the application, but the reasons for the change of name may be considered in the determination of whether the obstacle to the free movement is proportionate.
24. In this case, the Supreme Administrative Court considers the following.
25. AA holds the nationality of two EU Member States, France and Sweden, and, as a citizen of the Union, she has exercised the right to move freely and reside in a Member State other than her Member State of origin. She has been granted a change of surname in France and wishes to change to the same surname in Sweden. AA has stated that it would entail serious inconvenience for her both at professional and private levels if she was refused a change of surname. According to her, such a decision would entail an unjustified obstacle to her right to free movement.
26. The inconveniences described by AA are such as are typically regarded as constituting obstacles to the free movement of an EU citizen (see section 20 above). There is no reason to question that the inconveniences may arise in practice. Accordingly, the decision of the Swedish Tax Agency not to grant the change of name involves a concrete risk that her free movement will be restricted. The question is whether such a restriction can be justified.
27. As reasons for its position, the Swedish Tax Agency has stated that AA herself has chosen to change surname in France and that the interests of the holders of the Montclair AB trade name and the persons who use the Monclair surname outweigh AA's interests.

28. The case law of the European Court of Justice shows that a restriction on free movement cannot be justified on the sole ground that change of name in another Member State is made voluntarily without taking into consideration the reasons for the change of name. The Supreme Administrative Court notes that it has not come to light that AA had any reasons for her application other than those which she has stated or that she, by virtue of her application, attempted to circumvent the provisions of the Names Act.
29. In the overall assessment which is to be carried out, the Supreme Administrative Court finds that AA's interests in being able to change surname weigh more heavily than the reasons against. Accordingly, there are special reasons in accordance with section 13 of the Names Act for AA to be able to change her surname to Montclair. Thus, the appeal of the Swedish Tax Agency is rejected.

The question regarding compensation

30. The question regarding the right to compensation for costs of litigation is, unlike the name issue, of such character that, pursuant to section 5 of the Administrative Court Procedure Act (1971:289), it should be addressed by the Supreme Administrative Court in full session.

Justices Jäderblom, Knutsson, Nymansson, Bull and Gäverth have participated in the ruling.

Judge Referee: Birgitta Fors Almassidou.