Recognition of a Surname and Validity

In (C-96/04) Standesamt Stadt Niebüll, the ECJ negated jurisdiction to answer the question referred by the Amtsgericht Niebüll in its reference for a preliminary ruling under Art.234 EC.
The background of the case was the following: A child of two German nationals was born in Denmark. The child received – according to Danish law – a double-barrelled name composed of his father´s and mother´s surnames, who did not use a common married name. After moving to Germany, German registry offices refused to recognize the surname of the child as it had been determined in Denmark, since according to German private international law (Art.10 EGBGB) the name of a person is subject to the law of his/her nationality, i.e. in this case German law. According to German law it is not possible for a child to bear a double-barrelled name consisting of the two surnames of his/her parents.

The *Standesamt* (registry office) brought the matter before the *Amtsgericht* (Local Court) *Niebüll*, which decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling under Art.234 EC: "In light of the prohibition on discrimination set out in Art.12 EC and having regard to the right to the freedom of movement for every citizen of the Union laid down by Art. 18 EC, is the provision on the conflict of laws contained in Article 10 of the EGBGB valid, in so far as it provides that the right to bear a name is governed by nationality alone?" To put it in different words, the question is whether the freedom of movement (Art.18 EC) guarantees the recognition of a surname which has been determined validly in another Member State. This question has been answered affirmative by Advocate General Jacobs in his opinion, but has now – due to the lack of jurisdiction – been left open by the ECJ.

The case has to be read in the context of Konstantinidis (ECJ, 30 March 1993, C-168/91) and Avello (ECJ, 2 October 2003, C-148/02) and concerns the – highly discussed – principle of mutual recognition and is therefore of high interest.