Advocate General's Opinion in Case "Grunkin and Paul"

Today, *Advocate General Sharpston* has delivered her opinion in case C-353/06 (***Grunkin and Paul***).

The background of the case is as follows: The case concerns a child who was born in Denmark having, as well as his parents, only German nationality. The child was registered in Denmark – in accordance with Danish law – under the compound surname *Grunkin-Paul* combining the name of his father (*Grunkin*) and the name of his mother (*Paul*), who did not use a common married name. After moving to Germany, German authorities refused to recognise 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 and according to German law (§ 1617 BGB), parents who do not share a married name shall choose *either* the father's or the mother's surname to be the child's surname.

The Local Court *(Amtsgericht) Niebüll* which was called to designate the parent having the right to choose the child's surname, sought a preliminary ruling of the ECJ on the compatibility of Art.10 EGBGB with Articles 12 and 18 EC-Treaty. However, the ECJ held that it had no jurisdiction to answer the question referred since the referring court acted in an administrative rather than in a judicial capacity (judgment of 27 April 2006, C-96/04). In the following, the parents applied again – without success – to have their son registered with the surname *Grunkin-Paul*. The parents' challenge to this refusal was heard, by virtue of German procedural law, by the *Amtsgericht Flensburg*. The *Amtsgericht Flensburg* held that it was precluded from instructing the registrar to register the applicants' son under this name by German law. However, since the court had doubts as to whether it amounts to a violation of Articles 12 and 18 EC-Treaty to ask a citizen of the European Union to use different names in different Member States, the court referred with decision of 16th August 2006 (69 III 11/06) the **following questions** to the ECJ for a **preliminary ruling:**

> *In light of the prohibition on discrimination set out in Article 12 of the EC Treaty and having regard to the right to the freedom of movement for every*

citizen of the Union laid down by Article 18 of the EC Treaty, 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?

Advocate *Generel Sharpston* now held in her **opinion** that the Court should answer the question raised by the *Amtsgericht Flensburg* as follows:

– a choice of law rule under which a person's name is to be determined in accordance with the law of his nationality is not in itself incompatible with Articles 12, 17 or 18 EC;

– however, any such rule must be applied in such a way as to respect the right of each citizen of the Union to move and reside freely in the territory of the Member States;

– that right is not respected if such a citizen has been registered under one name in accordance with the applicable law of his place of birth, before it becomes necessary to register his name elsewhere, and is subsequently required to register a different name in another Member State;

– consequently, the authorities of a Member State may not, when registering the name of a citizen of the Union, automatically refuse to recognise a name under which he has already been lawfully registered in accordance with the rules of another Member State, unless recognition would conflict with overriding reasons of public interest which admit of no exception.

See for the full opinion the website of the ECJ. See further on this case also our previous posts on the judgment of the Court of 27 April 2006 which can be found here as well as on the referring decision of the Amtsgericht Flensburg which can be found here.