

ECJ: Judgment in Case “Grunkin and Paul”

Today, the ECJ delivered its judgment in case C-353/06 (*Grunkin and Paul*) which has been awaited with high interest.

As reported in previous posts, 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?

Thus, the referring court essentially asked whether Artt. 12, 18 EC preclude authorities of a Member State from refusing to recognise a surname which has been determined and registered in a second Member State in which the person – who has only the nationality of the first Member State – was born and has been resident.

The **Court** now **answered** the question referred by the *Amtsgericht Flensburg* as follows:

In circumstances such as those of the case in the main proceedings, Article 18 EC precludes the authorities of a Member State, in applying national law, from refusing to recognise a child's surname, as determined and registered in a second Member State in which the child – who, like his parents, has only the nationality of the first Member State – was born and has been resident since birth.

In its reasoning, the Court first (para. 16) states that the case falls within the **scope of the EC-Treaty**. The Court stresses that even though the rules governing a person's surname fall within the competence of the Member States, the latter have to, when exercising their competence, comply with Community law (unless the case concerns an internal situation without any link with Community law).

In the following, the Court holds with regard to **Art. 12 EC**, that the child is not discriminated against on grounds of nationality (para. 19 et seq.).

However, with regard to **Art. 18 EC**, the Court states that “[h]aving to use a surname, in the Member State of which the person concerned is a national, that is different from that conferred and registered in the Member State of birth and residence is liable to hamper the exercise of the right, established in Article 18 EC, to move and reside freely within the territory of the Member States.” (para. 22)

The Court refers in this context to its judgment in *Garcia Avello* and sets forth that – also in the present case – **serious inconveniences** may be caused due to the discrepancy in surnames (para. 23 et seq.). Thus, according to the Court “[...] every time the child concerned has to prove his identity in Denmark, the Member State in which he was born and has been resident since birth, he risks having to dispel doubts concerning his identity and suspicions of misrepresentation caused by the difference between the surname he has always used on a day-to-day basis, which appears in the registers of the Danish authorities and on all official documents issued in his regard in Denmark, such as, inter alia, his birth certificate, and the name in his German passport.” (para. 26)

This **obstacle to free movement** could only be **justified** if it was based on “objective considerations and was proportionate to the legitimate aim pursued” (para. 29). **This is, however, according to the Court, not the case.** Thus, the Court does not regard the arguments brought forward by the German Government such as, inter alia, that the connecting factor of nationality constituted “an objective criterion which makes it possible to determine a person’s surname with certainty and continuity” (para. 30) as sufficient. Rather the Court states that “[n]one of the grounds put forward in support of the connecting factor of nationality for determination of a person’s surname, however legitimate those grounds may be in themselves, warrants having such importance attached to it as to justify [...] a refusal by the competent authorities of a Member State to recognise the surname of a child as already determined and registered in another Member State in which that child was born and has been resident since birth.” (para. 31)

See with regard to this case also our previous post on Advocate General Sharpston’s opinion which can be found here as well as our post on the referring decision of the Amtsgericht Flensburg which can be found here and the post on the first judgment in this case (then known as Standesamt Stadt Niebüll) which can be found here.