Case C-353/06

Proceedings brought by

Stefan Grunkin and Dorothee Regina Paul

(Reference for a preliminary ruling from the Amtsgericht Flensburg)

(Right to move and reside freely within the territory of the Member States – Private international law relating to surnames – Applicable law determined by nationality alone – Minor child born and resident in one Member State with the nationality of another Member State – Non-recognition in the Member State of which he is a national of the surname acquired in the Member State of birth and residence)

Summary of the Judgment

1. *Community law – Principles – Equal treatment – Discrimination on grounds of nationality – National conflict of law rules – Determination of surname*

(Art. 12 EC)

2. *Citizens of the European Union – Right of free movement and residence in the territory of the Member States – National conflict of law rules – Determination of surname*

(Art. 18 EC)

1. Where a child, who is a national of one Member State and is lawfully resident in the territory of a second Member State, and his parents have only the nationality of the first Member State and, in respect of the conferring of a surname, the conflicts rule of the first Member State refers to the domestic substantive law on surnames, the determination of that child's surname in that Member State in accordance with its legislation cannot constitute discrimination on grounds of nationality within the meaning of Article 12 EC.

(see paras 16-18, 20)

2. Article 18 EC precludes the authorities of a Member State, in applying national law which uses nationality as the sole connecting factor for the determination of surnames, 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. Having 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. In that regard, a discrepancy in surnames is liable to cause serious inconvenience for the person concerned, inter alia, in both the public and the private spheres on account of the fact that, as he has only one nationality, he will be issued with a passport by the State of which he is a national and which alone has the competence to do so, in a name that is different from the name he was given in the State of birth and residence. In that regard, the child concerned risks having to dispel doubts concerning his identity and suspicions of misrepresentation caused by the difference between the two surnames every time he has to prove his identity in the Member State of residence. Furthermore, in relation to attestations, certificates and diplomas or any other document establishing a right, any difference in surnames is likely to give rise to doubts as to the authenticity of the documents submitted, or the veracity of their content.

In view of the fact that the person concerned will bear a different name every time he crosses the border between the two Member States concerned, the connecting factor of nationality, which seeks to ensure that a person's surname may be determined with continuity and stability, will result in an outcome contrary to that sought, in such a way that it cannot justify that refusal. The objective of preserving relationships between members of an extended family, however legitimate that objective may be in itself, also does not warrant having such importance attached to it as to justify such a refusal. Furthermore, the considerations of administrative convenience which led the Member State whose nationality the person concerned possesses to prohibit double-barrelled surnames cannot suffice to justify such an obstacle to freedom of movement, particularly because the prohibition in question does not appear to be absolute in view of the

legislation of the Member State concerned.

(see paras 22-23, 25-28, 31-32, 36-37, operative part)

JUDGMENT OF THE COURT (Grand Chamber)

14 October 2008 (*)

(Right to move and reside freely within the territory of the Member States – Private international law relating to surnames – Applicable law determined by nationality alone – Minor child born and resident in one Member State with the nationality of another Member State – Non-recognition in the Member State of which he is a national of the surname acquired in the Member State of birth and residence)

In Case C-353/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Amtsgericht Flensburg (Germany) made by decision of 16 August 2006, received at the Court on 28 August 2006, in the proceedings

Stefan Grunkin,

Dorothee Regina Paul,

other parties:

Leonhard Matthias Grunkin-Paul,

Standesamt Niebüll,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann (Rapporteur), C.W.A. Timmermans, A. Rosas, K. Lenaerts and M. Ilešič, Presidents of Chambers, G. Arestis, A. Borg Barthet, J. Malenovský, J. Klučka, U. Lõhmus, E. Levits and C. Toader, Judges,

Advocate General: E. Sharpston,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 11 December 2007,

after considering the observations submitted on behalf of:

– Mr Grunkin, by himself,

– the German Government, by M. Lumma and J. Kemper, acting as Agents,

– the Belgian Government, by L. Van den Broeck, acting as Agent,

– the Greek Government, by E.-M. Mamouna, G. Skiani and O. Patsopoulou, acting as Agents,

– the Spanish Government, by M. Sampol Pucurull and J. Rodríguez Cárcamo, acting as Agents,

– the French Government, by G. de Bergues and J.-C. Niollet, acting as Agents,

– the Lithuanian Government, by D. Kriaučiūnas, acting as Agent,

– the Netherlands Government, by H.G. Sevenster, acting as Agent,

– the Polish Government, by E. Ośniecka-Tamecka, acting as Agent,

– the Commission of the European Communities, by D. Maidani, S. Gruenheid and W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 April 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 12 EC and 18 EC.

2 The reference was made in the course of proceedings between Mr Grunkin and Ms Paul, and the Standesamt Niebüll (Registry Office, Niebüll) regarding the latter's refusal to recognise the surname of their son Leonhard Matthias, as determined and registered in Denmark, and to enter that surname in the family register established for them at that registry office.

German legal context

Private international law

3 Article 10(1) of the Law introducing the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch) ('the EGBGB') provides:

'A person's name falls to be determined by the law of the State of his or her nationality.'

Civil law

4 As regards the determination of the surname of a child whose parents bear different surnames, Paragraph 1617 of the German Civil Code (Bürgerliches Gesetzbuch) ('the BGB') provides:

'(1) If the parents do not share a married surname but have joint custody of the child, they shall, by declaration before a registrar, choose either the father's or the mother's surname at the time of the declaration to be the surname given to the child at birth. …

(2) If the parents have not made that declaration within a period of one month following the child's birth, the Familiengericht [Family Court] shall transfer the right to determine the child's surname to one of the parents. Subparagraph 1 shall apply *mutatis mutandis*. The court may lay down a time-limit for the exercise of that right. If the right to choose the child's surname has not been exercised on the expiry of that period, the child shall bear the surname of the parent to whom the right was transferred.

(3) Where a child is born outside German territory, the court shall not transfer the right to choose the child's surname in accordance with subparagraph 2 unless either a parent or the child so requests or unless it is necessary to record the child's surname on a German registration or identity document.'

The dispute in the main proceedings and the question referred for a preliminary ruling

5 Leonhard Matthias Grunkin-Paul was born on 27 June 1998 in Denmark to Dr Paul and Mr Grunkin, who were at that time married and who are both of German nationality. Their child also has German nationality and has lived in Denmark since he was born.

6 In accordance with a certificate issued by the competent Danish authority attesting to that name ('navnebevis'), the child was given, pursuant to Danish law, the surname Grunkin-Paul, which was also entered on his Danish birth certificate.

7 The German registry office refused to recognise the surname of the child as it had been determined in Denmark on the ground that, under Article 10 of the EGBGB, the surname of a person falls to be determined by the law of the State of his or her nationality, and that German law does not allow a child to bear a double-barrelled surname composed of the surnames of both the father and mother. The appeals brought by Leonhard Matthias' parents against that refusal were dismissed.

8 The child's parents, who have divorced in the meantime, did not use a common married name and refused to determine the surname of their child in accordance with Paragraph 1617(1) of the BGB.

9 The Standesamt Niebüll brought the matter before the Amtsgericht Niebüll for a decision on the transfer of the right to determine young Leonhard Matthias's surname to one of his parents in accordance with Paragraph 1617(2) and (3) of the BGB. The Amtsgericht Niebüll stayed proceedings and made a reference for a preliminary ruling to the Court of Justice under Article 234 EC. In its judgment in Case C-96/04 *Standesamt Stadt Niebüll* [2006] ECR I-3561, the Court found that the Amtsgericht Niebüll, before which the matter had been brought in the context of non-contentious proceedings, exercised administrative authority without at the same time being called on to decide a dispute, with the result that it could not be regarded as exercising a judicial function. On that basis, the Court held that it had no jurisdiction to answer the question referred.

10 On 30 April 2006 the parents of Leonhard Matthias applied to the competent authority to have him registered in the family register held in Niebüll with the surname Grunkin-Paul. By decision of 4 May 2006, the Standesamt Niebüll refused that registration on the ground that it was not possible under the German law relating to surnames.

11 On 6 May 2006, the parents of the child applied to the Amtsgericht Flensburg for an order that the Standesamt Niebüll recognise their son's surname as determined and registered in Denmark and enter him in the family register under the name of Leonhard Matthias Grunkin-Paul.

12 The national court states that it cannot order the Standesamt Niebüll to register a surname which is not allowed under German law, but it nevertheless has doubts as to whether it is compatible with Community law for a citizen of the Union to be required to bear a different surname in different Member States.

13 In those circumstances the Amtsgericht Flensburg decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'In light of the prohibition on discrimination set out in Article 12 EC and having regard to the right to the freedom of movement for every citizen of the Union laid down by Article 18 EC, is the German provision on the conflict of laws contained in Article 10 of the EGBGB valid, in so far as it provides that the law relating to names is governed by nationality alone?'

The question referred for a preliminary ruling

14 By its question, the national court asks essentially whether Articles 12 EC and 18 EC preclude the competent authorities of a Member State 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.

The scope of the EC Treaty

15 It must be pointed out at the outset that the situation of the child Leonhard Matthias falls within the

scope of the EC Treaty.

16 Although, as Community law stands at present, the rules governing a person’s surname are matters coming within the competence of the Member States, the latter must none the less, when exercising that competence, comply with Community law unless what is involved is an internal situation which has no link with Community law (see Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraphs 25 and 26, and the case-law cited).

17 The Court has already held that such a link with Community law does exist in regard to children who are nationals of one Member State and are lawfully resident in the territory of another Member State (see *Garcia Avello*, paragraph 27).

18 Therefore, the child Leonhard Matthias can rely, in principle, as regards the Member State of which he is a national, on the right conferred by Article 12 EC not to be discriminated against on grounds of nationality and on the right, established in Article 18 EC, to move and reside freely within the territory of the Member States.

Article 12 EC

19 With regard to Article 12 EC, the Court would, however, point out that, as was submitted by all the Member States which made observations to the Court and by the Commission of the European Communities, the child Leonhard Matthias is not, in Germany, being discriminated against on grounds of nationality.

20 Since the child and his parents have only German nationality and, in respect of the conferring of a surname, the German conflicts rule refers to the German substantive law on surnames, the determination of that child’s surname in Germany in accordance with German legislation cannot constitute discrimination on grounds of nationality.

Article 18 EC

21 National legislation which places certain of the nationals of the Member State concerned at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 18(1) EC on every citizen of the Union (see Case C-406/04 *De Cuyper* [2006] ECR I-6947, paragraph 39, and Case C-499/06 *Nerkowska* [2008] ECR I-0000, paragraph 32).

22 Having 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.

23 The Court has already held, as regards children with the nationality of two Member States, that a discrepancy in surnames is liable to cause serious inconvenience for those concerned at both professional and private levels resulting from, inter alia, difficulties in benefiting, in the Member State of which they are nationals, from the legal effects of diplomas or documents drawn up in the surname recognised in another Member State of which they are also nationals. (*Garcia Avello*, point 36).

24 Such serious inconvenience may likewise arise in a situation such as that of the main proceedings. It matters little in that regard whether the discrepancy in surnames is the result of the dual nationality of the persons concerned or of the fact that, in the State of birth and residence, the connecting factor for determination of a surname is residence whilst, in the State of which those persons are nationals, it is nationality.

25 As the Commission observes, many everyday dealings, in both the public and the private spheres, require proof of identity, which is usually provided by a passport. As the child Leonhard Matthias has only German nationality, the issuing of that document falls within the competence of the German authorities alone. If those authorities refuse to recognise the surname as determined and registered in Denmark, the child will be issued with a passport by those authorities in a name that is different

from the name he was given in Denmark.

26 Consequently, 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.

27 Furthermore, the number of documents, for instance attestations, certificates and diplomas, on which there is a difference in the surname of the child concerned is likely to increase with the passing years, in so far as the child has strong links with both Denmark and Germany. It is apparent from the file that, although he lives mainly with his mother in Denmark, the child regularly stays in Germany on visits to his father, who settled there after the couple divorced.

28 Every time the surname used in a specific situation does not correspond to that on the document submitted as proof of a person's identity, inter alia with a view to obtaining benefits or an entitlement of some sort or to prove that examinations have been passed or skills acquired, or the surname in two documents submitted together is not the same, such a difference in surnames is likely to give rise to doubts as to the person's identity and the authenticity of the documents submitted, or the veracity of their content.

29 An obstacle to freedom of movement such as that resulting from the serious inconvenience described in paragraphs 23 to 28 of this judgment could be justified only if it was based on objective considerations and was proportionate to the legitimate aim pursued (see, to that effect, Case C-318/05 *Commission* v *Germany* [2007] ECR I-6957, paragraph 133, and the case-law cited).

30 In order to justify using nationality as the sole connecting factor for the determination of surnames, the German Government and some of the other Governments that submitted observations to the Court maintain inter alia that that connecting factor constitutes an objective criterion which makes it possible to determine a person's surname with certainty and continuity, to ensure that siblings have the same surname and to preserve relationships between members of an extended family. Moreover, that criterion is intended to ensure that all persons of a particular nationality are treated in the same way and that the surnames of persons of the same nationality are determined in an identical manner.

31 None 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, in circumstances such as those of the case in the main proceedings, 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.

32 In so far as the connecting factor of nationality seeks to ensure that a person's surname may be determined with continuity and stability, in circumstances such as those in the main proceedings, as was pointed out by the Commission, that connecting factor will result in an outcome contrary to that sought. Every time the child crosses the border between Denmark and Germany, he will bear a different name.

33 As regards the objective of ensuring that siblings have the same name, it is sufficient to point out that such an issue does not arise in the case in the main proceedings.

34 It should further be noted that the connecting factor of nationality under German private international law for the determination of a person's surname is not without exception. It is not disputed that the German conflict rules relating to the determination of a child's surname permit the connecting factor of the habitual residence of one of the parents where that habitual residence is in Germany. Therefore, a child who, like his parents, does not have German nationality may nevertheless have conferred on him in Germany a surname formed in accordance with German legislation if one of his parents has his habitual residence there. A situation similar to that of the child Leonhard Matthias could therefore also arise in Germany.

35 The German Government also submits that its national legislation does not allow double-barrelled surnames for practical reasons. It must be possible to limit the length of surnames. The German legislature has ensured that the next generation of a family will not be forced to give up a part of a surname. What one generation would gain in freedom if double-barrelled surnames were accepted, the next generation would lose. The latter would no longer have the same possibilities of combining names as the preceding generation.

36 However, such considerations of administrative convenience cannot suffice to justify an obstacle to freedom of movement as was found in paragraphs 22 to 28 of this judgment.

37 Furthermore, as is apparent from the order for reference, German law does not wholly preclude the possibility of conferring double-barrelled surnames on children of German nationality. As the German Government confirmed at the hearing, where one of the parents has the nationality of another State, the parents may choose to form the child's surname in accordance with the law of that State.

38 In addition, it must be pointed out that no specific reason was cited before the Court that might possibly preclude recognition of the child Leonhard Matthias's surname, as conferred and registered in Denmark, for instance that that name was contrary to public policy in Germany.

39 In view of the foregoing considerations, the answer to the question referred to the Court must be that, 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.

Costs

40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

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.

[Signatures]

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* Language of the case: German.