

# Who Gets to Choose the Last Name? The Grunkin-Paul Case<sup>1</sup> and the Compatibility between The German Name Registration Collision Law and The Right of Free Movement in the Contract of the European Community

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The Treaty on the European Union guarantees the right of free movement within its member states in Art. 12 and contains a discrimination prohibition in its Art. 18 (T. The European Court of Justice (ECJ) had to decide on October 14, 2008 in the *Grunkin-Paul* case whether the German collision law could endure these provisions, even if it decides the question of giving a child a last name only by referring to the nationality of the child.

According to German registration law the last name of a German child born in Germany is decided solely by its nationality. This can change, when a German child is born abroad and the birth country allows the registration of the name following its own rules, which can significantly differ from the German statute. The consequence can be that the child has a last name which is not accepted by the German register authorities.

This happened to Mrs. Dorothee Paul and Mr. Stefan Grunkin, who happened to live in Denmark when their son Leonhard Matthias was born in June 1998. Mrs. Paul and Mr. Grunkin, who were married at the time of the birth, had both decided to keep their own last names, when they married, and wanted their son to have the last name Grunkin-Paul.

The Danish authorities accepted this choice but the German register authorities refused to generate a birth certificate with this last name. The Niebüll<sup>2</sup> register office argued that they could not accept the double last name since double last names were very strictly handled in Germany and only available for a married spouse if the spouse's last name is not chosen as the family name. In any case, a double last name cannot be transferred to the children of a couple. They further did not accept the double last name because Leonhard Matthias has only the German nationality and following Art. 10 of the German conflict law the question which statute is applicable for the name registration is solely decided by the nationality of the person.

Mrs. Paul and Mr. Grunkin pursued the legal recourse and ended at the European Court of Justice which had to decide if the German choice of law provision in its Art. 10 EGBGB<sup>3</sup> is contrary to the Articles 12 and 18 of the European contract.

They decided in favor for the European Community provisions.

The ECJ denied a violation of the Art.12 provision (discrimination prohibition). Matthias Leonhard and his parents have the German nationality and therefore it is legal to use the German provisions. But the ECJ saw a violation of the Art. 18 provision because the conflict provision in the German

collision law discriminates against Germans, when they decide to live in another country within the EU and therefore have to encounter disadvantages.

The obligation to use different last names in different member countries (as here in Germany and Denmark) can constrain EU-citizens to move freely within the EU member states and has therefore to be remanded.

In the past, the ECJ had decided, relating to children with two nationalities, that the different treatment of last names in different countries within the EU can evoke serious disadvantages, private and professional<sup>4</sup>. This is because of the legal consequences of documents and other official files issued with one name or the other and the confusion which is caused by showing them together.

Especially this kind of negative consequence was to be expected in the *Grunkin-Paul* case. In this context, it doesn't matter if the difference of the last names results from the nationality or nationalities of the person or from the name registration right of the country of domicile.

Many daily necessities, either private or official, need a proof of identity and this can normally only be brought through a passport. Since Leonhard Matthias has only the German nationality the competence for the issuing of a passport lies only in the hands of the German authorities. If these deny the name choice made according to Danish law they are going to issue a passport with a name that is different from the name registered in Denmark. This means for Leonhard Matthias that he risks running into serious problems every time he has to prove his identity in Denmark, the country where he was born and where he lives. People will doubt his identity based on the discrepancy of his names in his birth certificate and his passport. These problems will only increase since the number of documents with the name on them will also increase over time, for example report cards, certificates and diplomas will all have a name which is not consistent with the name in the passport or the birth certificate.

The ECJ decided that these disadvantages are severe and the German authorities are obliged to comply with the fact that many German people choose to live in another country in the EU and want to take advantages of the rules of their country of domicile. This means that double names have to be permitted in these cases to avoid serious difficulties. The argument of the German government that double names were too complicated for practical reasons and should be avoided therefore did not convince, because the right of freedom of movement outweighs the German collision law. The German

authorities were advised by the ECJ to issue a passport with the last name *Grunkin-Paul*, although this is not according to the German name registration law.

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1 *Grunkin-Paul*, European Court of Justice from October 14, 2008, C-353/2006

2 Niebüll is a small town in the North of Germany next the Danish border.

3 EGBGB – Introductory Law to the German Civil Code

4 ECJ, Rs.c-96/04,Slg. 2006,I3561,Rn.11ff.