JUDGMENT OF THE COURT (First Chamber)

27 April 2006 *

In Case C-96/04,

REFERENCE for a preliminary ruling under Article 234 EC, by the Amtsgericht Niebüll (Germany), made by decision of 2 June 2003, received at the Court on 26 February 2004, in the proceedings brought by

Standesamt Stadt Niebüll,

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of the Chamber, N. Colneric, J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges,

Advocate General: F.G. Jacobs,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 April 2005,

* Language of the case: German.

after considering the observations submitted on behalf of:

— Leonhard Matthias, a minor, by his father, S. Grunkin,

— the German Government, by A. Tiemann and A. Dittrich, acting as Agents,

— the Belgian Government, by A. Goldman, acting as Agent,

— the Greek Government, by E.-M. Mamouna, S. Vodina and G. Skiani, acting as Agents,

— the Spanish Government, by E. Braquehais Conesa, acting as Agent,

— the French Government, by G. de Bergues and A. Bodard-Hermant, acting as Agents,

— the Netherlands Government, by H.G. Sevenster and C.W. Wissels, acting as Agents,

— the Commission of the European Communities, by M. Condou-Durande and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2005,

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 brought by the Standesamt Stadt Niebüll (the Registry Office, Niebüll) ('the Standesamt') in order to transfer the right to determine a child's surname to one of his parents. They had previously refused to give the child any name other than a double-barrelled name composed of their respective surnames, under which that child was already registered in Denmark where he was born.

National law

Private international law

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

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

Civil law

4 As regards the determination of the name 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 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.'

5 Paragraph 46 of the Law on non-contentious proceedings (Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit) states:

'Before making a decision transferring to one parent the right to determine the surname pursuant to Paragraph 1617(2) of the [BGB], the Familiengericht shall hear both parents and seek to bring them to an agreed choice. The Familiengericht's decision need not state the grounds on which it is based; no appeal shall lie from it.'

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

6 The child Leonhard Matthias was born on 27 June 1988 to a married couple, Dorothee Paul and Stefan Grunkin, both of German nationality. The child, who also had German nationality, was living in Denmark at the date of the order for reference.

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

8 The Registrar's Office in Germany refused to recognise the surname of the child of Ms Paul and Mr Grunkin as it had been determined in Denmark on the ground that, under Paragraph 10 of the EGBGB, the name of a person falls to be decided under the law of the country of his nationality, and that German law does not allow a child to bear a double-barrelled name composed of his father and mother's surnames. The

actions brought by Ms Paul and Mr Grunkin against that refusal were dismissed at final instance by the judgment of the Kammergericht (Higher Regional Court) Berlin. The Bundesverfassungsgericht (Federal Constitutional Court) refused to examine the constitutional complaint brought in the child's name.

9 Ms Paul and Mr Grunkin, who had divorced in the meantime, did not use a common married name and refused to determine the name of their child in accordance with Paragraph 1617(1) of the BGB.

10 The Standesamt brought the matter before the Amtsgericht (Local Court) Niebüll, as Familiengericht, in order to transfer the right to determine the child's surname to one of his parents in accordance with Paragraph 1617(2) and (3) of the BGB. Taking the view that, if Community law requires that the name which is valid under Danish law be recognised under the German legal system, the proceedings pending before it would have no purpose, the Amtsgericht Niebüll decided to stay the proceedings before it 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 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?'

The jurisdiction of the Court

11 Under the first paragraph of Article 234 EC, the Court of Justice has jurisdiction to give preliminary rulings concerning, inter alia, the interpretation of the EC Treaty

and of the acts of the institutions of the European Community. The second paragraph of that article adds that 'where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon'. The third paragraph of Article 234 EC states that 'where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice'.

12 In order to determine whether a body making a reference is a court or tribunal for the purposes of Article 234 EC, which is a question governed by Community law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (see, in particular, Case C-54/96 *Dorsch Consult* [1997] ECR I-4961, paragraph 23, and the case-law cited; Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 33; Case C-178/99 *Salzmann* [2001] ECR I-4421, paragraph 13; and Case C-182/00 *Lutz and Others* [2002] ECR I-547, paragraph 12).

13 Furthermore, whilst Article 234 EC does not make a reference to the Court subject to there having been an *inter partes* hearing in the proceedings in the course of which the national court refers a question for a preliminary ruling (see Case C-18/93 *Corsica Ferries* [1994] ECR I-1783, paragraph 12), it follows none the less from that article that a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (see orders in Case 138/80 *Borker* [1980] ECR 1975, paragraph 4, and in Case 318/85 *Greis Unterweger* [1986] ECR 955, paragraph 4; and judgments in Case C-111/94 *Job Centre* [1995] ECR I-3361, paragraph 9; *Salzmann*, paragraph 14; *Lutz*, paragraph 13; and Case C-165/03 *Längst* [2005] ECR I-5637, paragraph 25).

14 Therefore, when it exercises administrative authority, without at the same time being called on to decide a dispute, the referring body, even if it satisfies the other conditions mentioned in paragraph 12 of the present judgment, cannot be regarded as exercising a judicial function (see *Job Centre*, paragraph 11; *Salzmann*, paragraph 15; and *Lutz*, paragraph 14).

15 In that connection it must be observed that where parents who do not use a married name but who jointly exercise custody of a child have not chosen, by declaration before a Registry Office official, either the father's or the mother's name as the birth name of that child, German law provides that the Familiengericht is competent to transfer the right to determine the child's surname to one of the parents.

16 It follows that the Familiengericht is required to adopt a decision without a Registry Office official having taken, or been able to take, an earlier decision on the matter. Thus, it is apparent from the file that, in the case in the main proceedings, the Standesamt merely brought the matter before the Amtsgericht Niebüll.

17 In those circumstances it must be held that the Amtsgericht Niebüll exercises administrative authority, without at the same time being called on to decide a dispute.

18 It is true that there was a dispute between the parents and the administration as to the possibility of registering the double-barrelled name 'Grunkin-Paul' in Germany. However, that dispute was settled at last instance by the Kammergericht Berlin and is not the subject of the proceedings before the Amtsgericht Niebüll.

19 Furthermore, there is no dispute, in the case in the main proceedings, between the parents, since they are in agreement about the name they wish to give to their child, namely the double-barrelled name composed of their respective surnames.

20 It is clear from all of the foregoing that, in those proceedings, the Amtsgericht Niebüll cannot be regarded as exercising a judicial function. Therefore, the Court has no jurisdiction to answer the question referred by the Amtsgericht Niebüll in its decision of 2 June 2003.

Costs

21 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the Amtsgericht Niebüll, 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 (First Chamber) hereby rules:

The Court of Justice of the European Communities has no jurisdiction to answer the question referred by the Amtsgericht Niebüll in its decision of 2 June 2003.

[Signatures]