Decision 58/2001 (XII. 7.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the matter of petitions seeking a posterior review of the unconstitutionality of a statute, the Constitutional Court – with dissenting opinions by dr. István Bagi, dr. Attila Harmathy, dr. János Németh and dr. Éva Tersztyánszky-Vasadi, Judges of the Constitutional Court – has adopted the following

decision:

1. The Constitutional Court holds the following:
The right pertaining to names is a fundamental right deducible from the right to human dignity guaranteed under Article 54 para. (1) of the Constitution.
Every man has got the inalienable right to have and bear his own name representing his (self)-identity. This right may not be restricted by the State.
Other elements of the right pertaining to names, and in particular the selection, changing and amendment of names, may be constitutionally restricted by the legislature.

2. The Constitutional Court holds that the text part "on one occasion…" in Section 28 para. (1) of Law-Decree 17/1982 on the Registers, the Marriage Procedure and on Bearing Names is unconstitutional, and therefore annuls this provision as of 15 December 2002.
The text remaining in force of the above provision is as follows: "The registrar may amend the forename of a minor under the age of 14 upon request by the parents."

3. The Constitutional Court holds that the text part "… on one occasion …" in Section 28 para. (2) of Law-Decree 17/1982 on the Registers, the Marriage Procedure and on Bearing Names is unconstitutional, and therefore annuls this provision as of 15 December 2002.
The text remaining in force of the above provision is as follows: "When a person having more than one forename requests the exclusive bearing of one of the forenames or the changing of the order of the forenames, the registrar shall amend the original record. After the amendment, the register shall contain not more than two forenames."

4. The Constitutional Court holds that Section 1 of Council of Ministers Decree 11/1955 (II. 20.) MT on the Changing of Names, Sections 4 and 5 of Minister of Interior Decree 2/1955 (IV. 23.) BM on the implementation of Council of Ministers Decree 11/1955 (II. 20.) MT on the Changing of Names, and on the regulation of certain matters related to the bearing of names, furthermore, Section 48 para. (3) of Council of Ministers and Council Office Ordinance 2/1982 (VIII.14.) MT-TH on the Registers, the Marriage Procedure and on Bearing Names are unconstitutional, and therefore annuls the above provisions as of 15 December 2002.

5. The Constitutional Court holds that an unconstitutional omission of legislative duty occurred by the failure of the Parliament to grant in Section 26 of Act IV of 1952 on Marriage, Family and Guardianship the husband's right to bear his wife's family name after the marriage ceremony.
The Constitutional Court therefore calls upon the Parliament to meet its legislative duty by 15 December 2002.

6. The Constitutional Court rejects the following petitions:
a) the petition objecting to the lack of legal remedies in the matters of bearing and changing names, and claiming the violation of Article 70/K of the Constitution,
b) the petition aimed at the establishment of the unconstitutionality of and at the annulment of the provisions under Section 15 para. (4) and Section 27 paras (2)-(4) of Law-Decree 17/1982 on the Registers, the Marriage Procedure and on Bearing Names,
c) the petition aimed at the establishment of the unconstitutionality of and at the annulment of the provisions under Section 26 paras (4) and (5) of Act IV of 1952 on Marriage, Family and Guardianship,
d) the petition aimed at the establishment of the unconstitutionality of and at the annulment of the provisions under Section 4 and Section 5 para. (1) of Council of Ministers Decree 11/1955 (II. 20.) MT on the Changing of Names,
e) the petition aimed at the establishment of the unconstitutionality of and at the annulment of the provisions under Section 1 of Minister of Interior Decree 2/1955 (IV. 23.) BM on the implementation of Council of Ministers Decree 11/1955 (II. 20.) MT on the Changing of Names, and on the regulation of certain matters related to bearing names.
7. The Constitutional Court rejects the petitions aimed at the establishment of the unconstitutionality of:

a) regulation at the Law-Decree level,
b) the application of the “Hungarian Book of Forenames”.

8. The Constitutional Court refuses to examine the petition complaining about the decision on refusing to enter the forename “Györgyike” in the register.

The Constitutional Court publishes this Decision in the Hungarian Official Gazette.

Reasoning

I

The Constitutional Court consolidated the petitions submitted in the subject of bearing and changing names and judged them in a single procedure.

1. One of the petitioners requested the establishment of the unconstitutionality of and the annulment of certain provisions under Sections 27 and 28 of Law-Decree 17/1982 on the Registers, the Marriage Procedure and on Bearing Names (hereinafter: the LDR).
According to the petitioner, regulating the above matter in a Law-Decree is contrary to Article 8 para. (2) of Act XX of 1949 on the Constitution of the Republic of Hungary, providing that in the Republic of Hungary, the rules pertaining to fundamental rights and obligations shall be determined in Acts of Parliament which, however, may not restrict the essential contents of fundamental rights.
The petitioner claims that the restrictive provisions of the Law-Decree concerned violate Article 67 para. (2) of the Constitution, too, according to which parents shall have the right to choose the form of education given to their children. The petitioner also refers to Article 68 para. (2) of the Constitution, according to which the Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages, and the use of names in their native languages. In the petitioner’s opinion, people of Hungarian nationality also have the right to use names. In the above belief, the petitioner filed a request at the Registrar’s Office to enter in the register the name “Györgyike” as the second forename of the petitioner’s child. They had planned to give the above name to the child as a continuation of family traditions, having regard to the fact that the grandmother, the great-grandmother and the great-great grandmother of the little girl had

also borne the requested name. The registrar rejected the registration of the name with reference to the fact that only the registration of the name "Györgyi", included in Ladó's Book of Forenames, was possible, therefore the latter name was entered in the register. According to the petitioner, preventing a person from bearing the name of her ancestors is a serious violation of human rights. The petitioner claims this situation to be also in violation of Article 8 para. (1) of the Constitution, providing that the Republic of Hungary recognises inviolable and inalienable fundamental human rights, and that the respect and protection of these rights is a primary obligation of the State.

In addition, the petitioner claims the unconstitutionality of the fact that the list of names allowed to be registered is not contained in a statute. The petitioner also complains about the lack of statutory provisions guaranteeing legal remedy before the court against the procedure at the Registrar's Office. The petitioner claims this to be a violation of Article 70/K of the Constitution, according to which claims arising from infringement on fundamental rights, and objections to the decisions of public authorities regarding the fulfilment of duties may be brought before a court of law.

The petitioner underlines that the rights of children must be protected as early as in the phase of choosing the child's name, and guarantees need to be secured to prevent parents from choosing a disadvantageous name [with due regard to Article 67 para. (1) of the Constitution], however, as the petitioner claims, this is to be regulated in an Act of Parliament.

2. The second petitioner requested a constitutional review of Council of Ministers Decree 11/1955 (II. 20.) MT on the Changing of Names (hereinafter: the CMD) as well as of Minister of Interior Decree 2/1955 (IV. 23.) BM on the implementation of the above and on the regulation of certain matters related to bearing names (hereinafter: the MID), claiming that certain rules of these Decrees violate personality rights and thus the Constitution itself. The provisions under Section 1 of the CMD and Sections 1, 4 and 5 of the MID are mentioned as rules like that. The petitioner holds the bearing of names to be a right closely related to persons, and as such, it may not depend on the will of the Minister of Interior; as far as the choosing of family names is concerned, he complains about the obligation to undergo a specific licensing procedure, and claims the unconstitutionality of the fact that citizens are not allowed to freely change their names as they like.

3. The third petitioner requested the establishment of the unconstitutionality of and the annulment of Section 4 and Section 5 para. (1) of the CMD with reference to the following:

– according to Article 8 para. (2) of the Constitution, the rules concerning fundamental rights and duties are defined by Acts of Parliament, which, however, may not restrict the essential contents of fundamental rights;
– according to Article 54 para. (1) of the Constitution, every human being has the inherent right to life and human dignity of which no one shall be arbitrarily deprived;
– according to Article 59 para. (1) of the Constitution, everyone has the right to the good standing of his reputation, the privacy of his home and the protection of secrecy in private affairs and personal data;
– pursuant to Article 66 para. (1) of the Constitution, the Republic of Hungary shall ensure the equality of men and women in all civil and cultural rights;
– the provisions referred to of the CMD violate Article 70/A of the Constitution.

4. The fourth petitioner requested the annulment of Section 27 para. (2) of the LDR with reference to a violation of "human rights". The petitioner refers to Article 54 of the Constitution "providing in general" that the Republic of Hungary respects human rights, and he furthermore refers to Section 77 para. (1) of Act IV of 1959 on the Civil Code (hereinafter: the CC), according to which everyone has the right to bear a name.
The petitioner holds that in line with the Constitution and the CC, the bearing of one's name is one of the most personal rights of individuals: "everyone may bear a name given by his parents, or chosen by himself to have his descendants inherit it". The bearing of one's name, claims the petitioner, may not be restricted. As claimed by the petitioner, it often happens that someone wishes to attach another family name to his original family name in order to have his family distinguished from other families. For example, "a person bearing the name of his father may want to bear as a second family name the family name of his mother well known from public life or for other reasons". According to the petitioner, this may be particularly justified when "the person's family name originating from his father is 'Kovács', 'Kiss' or 'Nagy' (tr. remark: very frequent Hungarian family names), and he wishes his descendants to bear their mother's family name as well".

The petitioner holds that solving the above problem is not only a legal issue but an ethical one as well; moreover, double family names can help to follow up the social position of families (e.g. the founding of professional dynasties). Thus, holds the petitioner, double family names could ensure diversity in the life of the country. The petitioner claims that Section 27 para. (2) of the LDR prevents the above, and therefore requests the annulment thereof.

The Constitutional Court has forwarded the petition to the Minister of Interior.

5. The fifth petitioner requests the annulment of Section 48 para. (3) of Council of Ministers and Council Office Ordinance 2/1982 (VIII.14.) MT-TH on the Registers, the Marriage Procedure and on Bearing Names (hereinafter: the LDR-IO (implementing ordinance)) issued on the basis of the authorisation contained in Section 42 para. (1) of the LDR, claiming that the contents thereof violate a statute of higher rank, namely Section 31 para. (1) of the LDR. He holds that "while the statute of higher rank merely provides for the omission of certain distinguishing letter signs in the course of entering a record in the register, the provision of lower rank empowers the registrar to change names by providing that a distinguishing letter sign may only be placed in front of the rest of the name." The petitioner claims this to restrict the applicant's right to bear his name and also to change the names in the case of which earlier, in relation to the ascendants, the distinguishing letter sign had been put after the family name as verified by documents. Therefore, the applicant would rather not have the distinguishing letter sign recorded, as it would be completely strange to him and would distinguish him even from his own family.

In the petitioner's case, the family name has been "Tóth Gy.", dating back, as verified by documents, to his great-grandfather. This name was not approved in Decision N-18/2/1998 of the Citizenship Department of the Ministry of Interior, with reference to Section 48 para. (3) of the LDR-IO specifying that a distinguishing letter sign may only be recorded in the register in front of the family name, and no deviation from this rule is possible even in the procedure of changing one's name.

According to the petitioner, the above rule on the location of the distinguishing letter sign constitutes a completely unjustified restriction and violates one's right to personal identity. The petitioner holds that the changed location of the distinguishing letter sign results in a new name. The petitioner claims that Section 31 para. (1) of the LDR, providing for the verification of the parents' or grandparents' names having been recorded in the register with the distinguishing letter sign, is indeed aimed at preserving the name used by the family.

The authentic document is of no use – states the petitioner – if the registrar may deviate from it on the basis of Section 48 para. (3) of the LDR-IO. According to the petitioner, the above power of the authority is not compatible with the principle of public authenticity, either. In addition, the petitioner claims that the above situation violates the provision in Section 1 para.

(2) of Act XI of 1987 on Legislation (hereinafter: the AL), specifying that "a statute of lower rank may not contradict a statute of higher rank". It is claimed that the challenged provision introduced a restriction which does not follow from the rules of the LDR, and what is more, it provides for the contrary.

6. The sixth petitioner objects to the present legal regulation – Section 26 paras (4) and (5) of Act IV of 1952 on Marriage, Family and Guardianship (hereinafter: the AMFG) – not allowing her to repeatedly take up, after the end of her second marriage, her (married) name borne during her first marriage. She finds this all the more injurious because her first former husband would otherwise give his consent to her request. In addition, the petitioner objects to fact that the legal provisions challenged by her are peremptory rules allowing no exemptions or derogations. In her opinion, the strict rules of the AMFG leaving no possibility for exemptions violate the fundamental right to human dignity as well as one's personality rights, together with the injury of the constitutional rights to private secrets and to the protection of personal data. She holds that it is contrary to the prohibition of discrimination that the AMFG allows the divorced wife to bear the whole name of her former husband with the affix referring to marriage, even without the approval of her divorced husband. At the same time – she points out – after the termination of the second marriage, the law prohibits – despite an approval given by the first divorced husband – the divorced wife from bearing the name of her first divorced husband with the affix referring to marriage. In the above respect, the petitioner refers to the provision of the CC specifying that any conduct to which the entitled person gave his consent shall not be deemed to violate inherent rights, provided that the granting of consent does not violate or endanger the interests of society. Therefore, the petitioner requests the establishment of the unconstitutionality of the statutory provisions challenged by her.

7. Three petitioners raise objections to the provisions on bearing names of the AMFG (Section 26) specifying that a man shall not be entitled to bear the family name of his wife upon their marriage. The petitioners claim this to be a discrimination against men.
One of the three petitioners also claims the unconstitutionality of Section 15 para. (4) of the LDR, claiming it to be in violation of Article 66 para. (1) of the Constitution.

The Constitutional Court addressed a question to the heads of the three historical Churches about recording family names in the ecclesiastical registers (the Primate Archbishop of

Esztergom, the Bishop of the Southern Evangelical Church District and the Bishop of the Tiszántúl Church District of the Reformed Church). The addressed persons have informed the Constitutional Court that the entering of names in their ecclesiastical registers is based on utmost compliance with the State rules on registers.

II

The statutory provisions referred to by the petitioners and taken into account by the Constitutional Court are as follows:

A) According to Act XX of 1949 on the Constitution of the Republic of Hungary (hereinafter: the Constitution):
"Article 2 para. (1) The Republic of Hungary is an independent democratic state under the rule of law."
"Article 7 para. (1) The legal system of the Republic of Hungary accepts the generally recognised principles of international law, and shall harmonise the country's domestic law with the obligations assumed under international law."
"Article 8 para. (1) The Republic of Hungary recognises inviolable and inalienable fundamental human rights. The respect and protection of these rights is a primary obligation of the State.
(2) In the Republic of Hungary regulations pertaining to fundamental rights and duties are determined by law; such law, however, may not restrict the basic meaning and contents of fundamental rights."
"Article 15 The Republic of Hungary shall protect the institutions of marriage and family."
"Article 54 para. (1) In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights."
"Article 56 In the Republic of Hungary everyone is legally capable."
"Article 59 para. (1) In the Republic of Hungary everyone has the right to the good standing of his reputation, the privacy of his home and the protection of secrecy in private affairs and personal data."
"Article 66 para. (1) The Republic of Hungary shall ensure the equality of men and women in all civil, political, economic, social and cultural rights."

“Article 67 para. (1) In the Republic of Hungary all children have the right to receive the protection and care of their family, and of the State and society, which is necessary for their satisfactory physical, mental and moral development.”
“Article 67 para. (2) Parents have the right to choose the form of education given to their children.”
“Article 68 para. (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages.”
“Article 70/A para. (1) The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.
(2) The law shall provide for strict punishment of discrimination on the basis of Paragraph (1).
(3) The Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all.”
“Article 70/K Claims arising from infringement on fundamental rights, and objections to the decisions of public authorities regarding the fulfilment of duties may be brought before a court of law.”

B) According to Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC):
“Section 49 para. (1) If an unconstitutional omission to legislate is established by the Constitutional Court *ex officio* or on the basis of a petition by any person because the legislature has failed to fulfil its legislative duty mandated by a statute, and this has given rise to an unconstitutional situation, it shall call upon – by setting a deadline – the organ in default to perform its duty.”

C) According to the AL:
“Section 1 para. (1) The legislative organs shall adopt the following statutes:

a) Acts of Parliament by the Parliament,

b)

c) Decrees by the Government,

d) Decrees by the Prime Minister and the Members of the Government (hereinafter jointly: Ministers),

e)

f) Decrees by local governments.

(2) In compliance with the above order, a statute of lower rank may not be contrary to a statute of higher rank."

"Section 2 The Parliament shall adopt Acts on the following:

…

…

c) the fundamental rights and obligations of citizens, the conditions thereof and restrictions thereupon as well as the procedural rules of enforcing them."

"Section 5 "Among the fundamental rights and obligations of citizens, Acts of Parliament shall be adopted in particular on … f) inheritance, the inherent rights and obligations of persons, and rights and obligations pertaining to intellectual property. …"

D) On the basis of the CC:

"Section 75 para. (1) Inherent rights shall be respected by everyone. Inherent rights are protected by law."

"Section 77 para. (1) Everyone has the right to bear a name.

(2) Scientific, literary or artistic activities, or activities accompanying public performances may be pursued under an assumed name without injuring the rights and legal interests of other persons."

E) According to the AMFG:

"Section 26 para. (1) After the marriage ceremony the wife may choose from the following options:

a) bearing the full name of her husband with the affix referring to marriage, possibly together with her own full name, or

b) bearing the family name of her husband with the affix referring to marriage, together with her own full name, or

c) bearing the family name of her husband with her own forename, or

d) bearing solely her own full name.

(2) The registrar shall inform the bride before the marriage ceremony about her right to choose the name she will bear after the marriage ceremony. Upon request by the registrar, the bride shall make a statement on her prospective name.
(3) If the marriage is terminated or its invalidity is established, the former wife shall continue to bear the name she used during the marriage. If she wants to deviate from this rule, she may notify the registrar thereof on one occasion, after the termination of the marriage or the establishment of the invalidity thereof. However, she may not choose, in the above case either, to bear the name of her former husband with the affix referring to marriage [paragraph (1) items a) and b)] if she did not bear it during the marriage.
(4) In the case of a new marriage, the wife may not bear the name of her former husband with the affix referring to marriage [paragraph (1) items a) and b)], and she shall not regain the right to do so even if the new marriage is terminated.
(5) Deviations from bearing the name chosen in accordance with paragraphs (1)-(3) may only be permitted by the authority entitled to change the name.
(6) Upon request by the former husband, or after his death, by the public prosecutor, the court may prohibit the former wife from bearing the name taken up in accordance with paragraph (1) items a) or b) if the former wife has been sentenced with final force to imprisonment for a deliberate criminal offence."
"Section 42 para. (1) The child shall bear the father's or the mother's family name as agreed on by the parents. However, a child of married parents may only bear the mother's family name if the mother bears solely her own name. The common children of married parents may only bear the same family name.
(2) If there is no person deemed to be the father of the child, the child shall bear the mother's family name until the entering of a presumed father into the register. In the course of the procedure of registering the presumed father of the child, the mother may declare that the child will continue to bear her family name.
(3) The forename of the child shall be determined by the parents."

F) According to Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (hereinafter: the ANEM):
"Section 12 para. (1) A person belonging to a minority has the right to choose his own forename and the forename of his child freely, to have his forename and family name registered in accordance with the rules of his mother tongue, and to have them indicated in official documents as long as such indication complies with applicable statutes. If the names

are registered with non-Latin spelling, it is compulsory to give the phonetic representation of the names in Latin letters.
(2) If requested, registration and the compilation of other personal documents – in accordance with paragraph (1) – may also be bilingual."
"Section 61 para. (1) For the purposes of this Act the following ethnic groups qualify as ethnic groups native in Hungary: Bulgarian, Romany, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian."

G) The provisions of the LDR examined by the Constitutional Court are as follows:
"Section 15 para. (4) The preliminary marriage license issued by the court of guardianship for a minor shall be valid for 6 months from the date of issue."
"Section 27 para. (1) Hungarian citizens bear family names and forenames.
(2) Family names consist of one word. The family name may consist of more than word only if the register entry of the parent whose name the affected person bears contains such a name.
(3) The forename may consist of two words at the most.
(4) The name entered in the register shall be the forename and family name applicable to the affected person at the time of birth, marriage or death. In the register of births, a maximum of two forenames – unless otherwise provided by a statute – shall be recorded in the order specified by the parents, chosen from the names listed in the Hungarian Book of Forenames with a supplement on the forenames of ethnic minorities, corresponding to the gender of the child. Members of the ethnic minorities living in Hungary and persons whose native tongue is a minority language may – without proving their belonging to an ethnic minority – bear a forename in line with their ethnicity.
(5) In official procedures, certificates, licences and registries, Hungarian citizens shall use the family name and forename applicable to them according to the register of births, or – in the case of married women – according to the register of marriages."
"Section 28 para. (1) The registrar may on one occasion amend the forename of a minor under the age of 14 upon request by the parents."
(2) When a person having more than one forename requests the exclusive bearing of one of the forenames or the changing of the order of the forenames, the registrar shall on one occasion amend the original record. After the amendment, the register shall contain not more than two forenames."
"Section 31 para. (1) A letter sign intended to distinguish persons belonging to the same family from one another or persons bearing the same family name from one another shall be

recorded in the register upon request by the affected person. The precondition of recording is that either the parent or the grandparent whose family name the applicant bears had a register entry containing the distinguishing letter sign.
(2) A distinguishing letter sign prohibited by a statute or violating inherent rights shall not be recorded on the basis of paragraph (1).
(3) Letters and other marks recorded earlier in the register – with the exception of the ones mentioned in paragraph (1) – shall be disregarded when issuing a certificate on the basis of the register."
"Section 42 para. (1) This Law-Decree shall enter into force as of 1 January 1983; its provisions shall be applied to pending cases as well. The Minister of Interior – in consultation with the Minister of Justice in respect of the procedure of marriage and the termination of marriage – shall be in charge of the implementation of this Law-Decree."

(H) The provisions of the CMD examined by the Constitutional Court are as follows:
"Section 1 The family name and the forename of a Hungarian citizen may be changed – upon his request – by the Minister of Interior."
"Section 4 If the wife bears the family name or the full name of her husband, changing the name of the husband shall result in the change of her name as well."
"Section 5 para. (1) A married, divorced or widowed wife shall not have the right to change her name – in the procedure of name changing – gained by way of marriage."

2. 2. The provisions of the LDR-IO examined by the Constitutional Court are as follows:
"Section 48 para. (2) When the recording of a distinguishing letter sign (Section 31 of the LDR) into the register is requested, the registrar shall obtain, before deciding upon the request, the copy of the birth or marriage register entry of the applicant's parent or grandparent.
(3) When recording a distinguishing letter sign (Section 31 of the LDR) into the register, the letter sign shall be recorded in capital, in front of the family name, separated with a dot from the family name."

J) The provisions of the MID examined by the Constitutional Court are as follows:
"Section 1 The application for changing a name [Council of Ministers Decree 11/1955 (II. 20.) MT (hereinafter: the D)] shall contain the circumstances justifying the changing of the name."

“Section 4 The recording of a name with an alien sounding, a name formed against the rules of the Hungarian language, a double family name, a historical name, a family name written according to archaic standards, or a family name borne by many families shall not be permitted – save under circumstances justifying special equity.”
“Section 5 Changing a name that has resulted from name changing shall be permitted in exceptional cases only.”

III

The petitions are, in part, well-founded.

1. The Constitutional Court points out the following:
The regulations in force endeavour to secure the legal protection of human personality on several levels. While in respect of the fundamental rights the primary source of law is the Constitution, the norms of the CC or – as in the present case – the public administration rules on registers (LDR) concretise the various personality rights. (However, as far as the actual situation is concerned, the provisions of the CMD and the MID are also to be examined as belonging to this group.)
The fact that the constitutional development of the 20th century has lead to the formation of constitutional guarantees safeguarding human personality has resulted in the State protecting the manifestations – such as the right pertaining to names – of human personality, in a manner similar to the protection of constitutional fundamental rights. The following main ideas constituted the background to this:
a) names are originally created independently from the will of the State, and they are primarily determined by social customs, conventions and religious traditions;
b) the State’s rights regarding names are basically limited to registering them and the State is only obliged to protect the registered data;
c) although the State is the primary user of names, it is empowered to register names only as a “neutral party”;
d) the legal regulation prescribed by the State provides merely for the legal conditions of registration, and determines the scope of data recorded in the registers of public authenticity;
e) as the natural existence of personality is independent from the State, the legal existence thereof does not make it possible for any external party to determine – in an unlimited manner

and disregarding the will of the affected parties – the enforceability and the essential content of this right.

Taking into account the above arguments, the Constitutional Court established in the present matter an indirect link to the fundamental right to human dignity: "…it is also a violation of the fundamental right to human dignity … when the State interferes without due reasons with conditions that fall into the sphere of privacy."

[Decision 46/1991 (IX. 10.) AB, ABH 1991, 211, 215]

2. The above aspects and considerations are reflected in the practice of the Constitutional Court concerning fundamental personality rights:

"The Constitutional Court regards the right to human dignity as another phrase for the 'general personality right.' (…) The general personality right is a 'mother right', i.e., a subsidiary fundamental right which may be relied upon at any time by both the Constitutional Court and other courts for the protection of an individual's autonomy when none of the concrete, named fundamental rights are applicable to a particular set of facts." [Decision 8/1990 (IV. 23.) AB, ABH 1990, 42, 44, 45]

Another early decision of the Constitutional Court details the content of the right to human dignity: "…the right to human dignity means that the individual possesses a core of autonomy and self-determination beyond the reach of all others, whereby … the human being remains a subject, not amenable to transformation into an instrument or object. This concept of the right to dignity distinguishes human beings from legal persons, which may be totally subjected to regulation, lacking an 'untouchable' essence. Dignity is a quality coterminous with human existence, a quality which is indivisible and cannot be limited…" [Decision 64/1991 (XII. 17.) AB, ABH 1991, 297, 308-309]. The Constitutional Court also pointed out that "the right to human dignity encompasses much more than merely the right to the good standing of one's reputation, it covers – among others – the right to the protection of the private sphere. Therefore it also violates the fundamental right to human dignity when the coercive force of an authority is applied against someone without due ground, and thus the State interferes, without any justification, with the privacy of individuals." [Decision 46/1991 (IX. 10.) AB, ABH 1991, 211, 215]

The "general personality right" – as the manifestation of the quality of man – embodies a general value the guaranteed protection of which may not be constitutionally made subject to the evaluation of specific aspects constituting the personality, and its protection (against the State and others) must be statutorily secured in general terms and by providing for equality

(equal conditions) with regard to the principles of content of personality. It follows from the principle of equal, complete and unrestrictable legal capacity (Section 8 of the CC) that the legal protection of one's personality may not be restricted by legislation to the so-called more serious cases, making a distinction between the legal consequences. [Decision 34/1992 (VI. 1.) AB, ABH 1992, 192, 199]

Principles of similar importance were established in Decision 56/1994 (XI. 10.) AB: "The right to privacy, the right to self-realisation, the right to the free development of one's personality, and the protection of one's autonomy necessitate the enforcement of the aspects specified in Article 8 para. (1) of the Constitution, namely the obligation of the State to respect and protect the inviolable and inalienable fundamental human rights." (ABH 1994, 312, 314)

According to Decision 995/B/1990 AB of the Constitutional Court, one's name serves the purpose of distinguishing him from others. At the same time, a name can represent family links (descent, family ties, or being outside a family), social status (nobility in earlier times, belonging to great families, privileges), gender and national identity. After entry in the register, each person shall be entitled and obliged to bear his registered name as one of the determinants of his identity. (ABH 1993, 515, 522) "The right to choose and bear a name is not a separate fundamental right named and regulated in a specific form in the Constitution, but a right of man having a certain relation to human dignity regulated in Article 54 para. (1) of the Constitution and to the right to the good standing of one's reputation regulated in Article 59 para. (1) of the Constitution. However, the above relation is not as close as to justify the independent fundamental right status of the right to bear a name. It follows from such an interpretation that – in the interest of others and the whole of society – statutorily regulated restrictions on choosing and bearing a name and on changing a registered name are permissible." (ABH 1993, 515, 522)

According to Decision 1270/B/1997 AB of the Constitutional Court, the above "certain relation" is the following: "…since its Decision 8/1990 (IV. 23.) AB, the Constitutional Court has considered the right to human dignity to be one of the phrases used to designate the so-called "general personality right", and the protection of privacy is one of the aspects of this general personality right. The general personality right contained in Section 75 of Act IV of 1959 on the Civil Code (hereinafter: the CC), and some classical inherent rights named in Chapter VII of the CC form part of the general personality right, and as such they enjoy the protection applied to fundamental rights" (ABH 2000, 713, 717). Therefore, the right to bear a

name as named in Section 77 of the CC already enjoys the protection applied to fundamental rights.

As pointed out by the Constitutional Court on several occasions, in the course of regulation, only an unavoidably necessary and proportionate restriction of fundamental rights, not affecting the essential contents thereof, may be considered constitutional. [Decision 25/1991 (V. 18.) AB, ABH 1991, 414, 418; Decision 59/1991 (X. 19.) AB, ABH 1991, 258, 261]

In the case of the matter decided upon in Decision 995/B/1990 AB, the Constitutional Court was not forced to make further differentiated and detailed examination on the right pertaining to names. In that matter, it was sufficient to establish that the whole of the right pertaining to names had "a certain relation" to human dignity regulated in Article 54 para. (1) of the Constitution and to the right to the good standing of one's reputation regulated in Article 59 para. (1) of the Constitution. (ABH 1993, 515, 522)

However, in the case under review, the Constitutional Court must step further as the petitions make it necessary and indispensable to analyse the elements of the right pertaining to names, and to examine their constitutionality one by one.

3. The various catalogues of human rights specify the right to have one's own name as a human right. For example, according to Article 24 point 2 of the International Covenant on Civil and Political Rights promulgated in Hungary in Law-Decree 8/1976 (hereinafter: the Covenant): "Every child shall be registered immediately after birth and shall have a name." According to Article 7 point 1 of the Convention on the Rights of the Child promulgated in Hungary in Act LXIV of 1991: "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

The judicial practice related to the European Convention on Human Rights included the right to have one's own name in the scope of application of Article 8 of the Convention (respect for privacy). However, according to the practice of the Court, Article 8 does not constitute grounds for the changing of names. Therefore, the Court rejected the claim of a Finnish petitioner aimed at the establishment of the violation of Article 8 of the Convention on the basis of the authorities not approving his changing his family name without any reason (Eur. Court HR, Stjerna v. Finland judgment of 25 November 1994, Series A.no.299-B), however, it condemned Switzerland for the violation of Article 8 (respect for private and family life) on the basis of the prohibition of discrimination declared in Article 14 of the Convention, as the petitioner had been refused by the Swiss authorities to attach the family name of his wife to

his own family name, although in the reverse case, the same had been allowed under Swiss law. (Eur.Court HR, Burgherz v. Switzerland judgment of 22. February 1994, Series A.no. 280-B)

Nevertheless, according to the practice of the Court, in the case of transsexuals, the right to change their names may lead to allowing them to request the changing of their names as registered, and the registers must be changed accordingly because of the change of both their sex and names. Thus the State is bound to accept the changing of their sex – together with name changing. (Eur.Court HR, B.v. France judgment of 25 March 1992, Series, A.no.232-C.)

4. From the human rights declarations referred above and the practice of the Strasbourg Court one can draw the conclusion that merely the right to have one's own name (alone) is a human right. However, on the basis of Article 51 para. (1) of the Constitution, as part of the right to self- determination, the following elements constituting the right pertaining to names may also gain the protection enjoyed by fundamental rights: e.g. the right to choose, change and amend one's name. At the same time, the "unified" fundamental rights protection does not mean that all elements of the right pertaining to names are unrestrictable; on the contrary, clear distinctions can be made between them on the basis of the weight and depth of the restrictions applicable to them. The above distinction informs us about the limits of restrictions (restrictability) by the State in the case of the various elements, furthermore, about the scope within which public interest may be enforced as well as about the extent to which one's right to self-determination is to be taken into account.

The part of the right pertaining to names (as a complex right deserving unified fundamental rights protection) directly linked to the right of self-determination may only be restricted on the basis of a forcing and unavoidable necessity, provided that the restriction is necessary and proportionate to its desired objective.

It is only the right to have one's own name – belonging to the first realm of the right pertaining to names – that enjoys absolute constitutional protection in the case of which the question of restrictability may not even be raised. This is so because the right to one's own name is a fundamental right in the case of which exclusivity and the possibility of being distinguished from all other persons are to be guaranteed. In fact, the right to have one's own name is an unrestrictable right in theory, too: no distinction may be made in respect of its restrictable and unrestrictable parts – essential and non-essential content. The right to have one's own name is conceptually identical with the entirety of the right only, and thus it is an

"essential content" as it is: consequently, it may not be restricted and is an inalienable and untouchable right the State may not dispose over. Everyone must have his own name which may not be substituted for by a number, a code or any other symbol. One's own name is one of the – fundamental – determinants of personal identity, serving the purpose of identification and distinction from others, thus it is one of the manifestations of one's individuality and unique character which cannot be substituted for. Therefore, the right to have one's own name is one of the fundamental elements of the right to self-identification, a fundamental right coming about with the birth of a child, which may not be withdrawn by the State and which is unrestrictable as far as its essential contents are concerned. The right to bear one's own name, as an external representation towards others of the right to have one's own name, may be valued similarly and it may enjoy the same protection. Its content represents that the existing name – as registered by the State – of someone may not be taken away from that person, and the State is not allowed to change the name without the consent of the affected person. Consequently, the right to bear one's own name is an unrestrictable fundamental right, too.

In fact, the above right is an inviolable and inalienable fundamental right of each person, and the State has the constitutional obligation to respect and protect it. [Article 8 para. (1) of the Constitution] The essential contents of this fundamental right are its inviolability and inalienability, and such essential contents may not be restricted even by law. [Article 8 para. (2) of the Constitution] Consequently, the right to have and bear one's own name is an unrestrictable fundamental right.

The component rights that fall into the other realm of the right pertaining to names may be restricted on the basis of the test of "necessity and proportionality". The rights of choosing, changing and amending one's name fall into this category, and their essential contents may be restricted on the basis of different standards.

In the practice of the Constitutional Court, in the case of the application of the test of "necessity-proportionality", there are precedents for differentiation concerning the constitutionality of restrictions, therefore a differentiated application of the standard does not change the standing practice of the Constitutional Court concerning the examination of the restriction of fundamental rights. Thus, the procedure (to be) followed is in line with Decision 21/1994 (IV. 16.) AB, and more specifically with the following statement: "According to the outlined methodology of evaluating constitutionality, the criteria of necessity and proportionality may be loosened or tightened depending on … the type of restriction concerned." (ABH 1994, 117, 122)

As far as choosing a name is concerned, the Constitutional Court refers to Article 67 para. (2) of the Constitution stipulating that parents shall have the right to choose the education given to their children. As the child has the right to his own name from the moment of birth, the parents' right to choose the child's name is considered a primary and fundamental right that may also be restricted in accordance with Article 8 para. (2) of the Constitution only.
The Constitutional Court holds that the right to choose the child's name is a right, in respect of its other constituent elements as well, that may be subject to restrictions by the State, and the constitutionality of such restrictions shall depend upon their necessity and proportionality.
However, the Constitutional Court points out that it is the State that is entitled to determine – on the basis of public opinion, linguistics and social-historical traditions – what is considered to be a name and within what scope persons may exercise the right to have their own names. Therefore, the State has more room for action in respect of choosing names: it may set up restrictions in this respect, and such restrictions and barriers originate from the very fact that the choosing of names is "bound by traditions", and this fact, together with the purpose of protecting the rights of others and securing the enforceability of such rights, may force the State to interfere.
Such a restriction may, for example, be that a child born in a family may not be given a family name different from that of the father or the mother, or a forename that cannot be justified by linguistics or by traditions, or that the name may not refer to a person's identity falsely: e.g. a wife divorced more than once may not bear the name of one of her former husbands on the basis of her own decision.

The situation is similar in the case of the right to change or amend one's name: the State's room for action is wider here within the limits set by Article 8 para. (2) of the Constitution, i.e. it may take into account, when setting the standards of both "necessity" and "proportionality", the criteria of public interest, namely the requirements related to the uniformity and transparency of State registers. The right to change one's name, however, does not lose on the above basis its fundamental legal character, moreover, it must be acknowledged expressly in relation to other rights. Such a distinction is not unique or unknown in the catalogue of constitutional fundamental rights. For example, refusing armed military service is, in itself, not a fundamental right but it becomes one in the context of the freedom of conscience. Similarly, in the case of transsexuals changing their sex, the right to change one's name becomes a fundamental right, and one's right to national identity may also justify the classification of the right to change one's name as a fundamental right. Likewise,

when the right to change one's name is directly related to human dignity – in which case the right can be regarded as an umbrella category in itself – it deserves constitutional protection as a fundamental right. In this category, one can find the right to change, for example, family names or forenames that result in unworthy, obscene etc. names (the right to break up an unfavourable composition of names); and the applicant's endeavour to get rid of a family name invoking (also) painful memories deserves protection as a fundamental right, too. [For example, in the case of a child or close relative bearing the name of a notorious criminal (with a rare name), or in the case of a name that has become ill-famed in the course of history]. Family names that sound repulsive or ridiculous or that give ground for ambiguous or offensive puns justify the classification of name changing as a fundamental right. Thus, in these cases acknowledgement as a fundamental right is justified by the clearly close and direct connection with human dignity. The same can serve as the grounds for protecting as a fundamental right – to a certain extent – the choice of a compound name of more than one element.

5. When "breaking up" the above elements of the right pertaining to names, the starting point is still the right to human dignity. What does and what does not follow from the fundamental right to human dignity?

To answer this question, the Constitutional Court has reviewed its practice:

In Decision 8/1990 (IV. 23.) AB (ABH 1990, 42) on the interpretation of Article 54 para. (1) of the Constitution, the Constitutional Court deduced from the right to human dignity as a general personality right a new fundamental right, namely the right of disposal. It stated in the same decision that the content of the right to human dignity is the same as that of the general personality right. When dividing the general personality right into further parts, naming the legally (constitutionally) relevant forms of existence of personality and building them into its practice, in part the Constitutional Court relied on the provisions of modern constitutions, the international legal literature, and the practice of the European Constitutional Courts. In this manner, it defined the content of the right to the freedom of privacy [Decision 46/1991 (IX. 10.) AB, ABH 1991, 211], and derived concrete individual rights from the relevant manifestations and aspects of the personality right. [For example, it deduced from the rights to self-identification and self-determination the right to ascertain one's parentage. Decision 57/1991 (XI. 8.) AB, ABH 1991, 272]

By further division of the personality rights, the Constitutional Court arrived at other "component" rights. For example, it deduced from the right to self-determination (disposal)

the right to the freedom of marriage [Decision 22/1992 (IV. l0.) AB, ABH 1992, 122], the right of disposal related to the party's participation in the litigation [Decision 9/1992 (I. 30.) AB, ABH 1992, 59; Decision 1/1994 (I. 7.) AB; (ABH 1994, 29)], and the right of disposal related to the prevailing party in the litigation [Decision 4/1998 (III. 1.) AB, ABH 1998, 71]. In addition, it derived from the right to self-identification (personal integrity) the right to ascertain one's parentage [Decision 57/1991 (XI. 8.) AB, ABH 1991, 272], and from the general freedom of action the right of sportsmen to compete [Decision 27/1990 (XI. 22.) AB, ABH 1990, 187], the freedom of entering into legal transactions and the right to have access to works of art [Decision 24/1996 (VI. 25.) AB, ABH 1996, 107].

6. The right pertaining to names is closely linked to at least two personality rights: the right to self-identification and the right to privacy. Thus the right pertaining to names – as a named fundamental right – is a specific part of the general personality right.
The acknowledgement of the right pertaining to names as a separate fundamental right also follows from the decision of the Constitutional Court adopted when examining the constitutionality of regulations on non-material damages: "…neither concerning specific dimensions of the person protected by the general personality right may the distribution of rights be based on criteria that unequally treat persons as owners, as subjects of proprietary rights, as persons having their own names, external appearance, personal data, non-specified personality rights, etc." [Decision 34/1992 (VI. 1.) AB, ABH 1992, 192, 197]
Therefore, "having a name" is one of the dimensions of the person protected under the general personality right, and this may be interpreted in such a way that the right pertaining to names enjoys the same constitutional protection as fundamental rights. [More specifically, Article 8 paras (1) and (2) of the Constitution shall apply.]
According to Decision 64/1991 (XII. 17.) AB of the Constitutional Court (ABH 1991, 297, 308, 312), the right to human dignity is absolute and unrestrictable only as a determinant of human status and in its unity with the right to life. However, the component rights deduced from this mother right, such as the right to self-determination and the right to self-identification may be restricted in accordance with Article 8 para. (2) of the Constitution just like any other fundamental right. (Decision 879/B/1992 AB, ABH 1996, 397, 401.)

7. Thus, the right pertaining to names is to be broken down – in accordance with the above principles – into its constituent elements, and such elements are to be assessed with regard to the extent and the weight of the applicability of fundamental rights restriction.

The Constitutional Court has performed the above assessment by defining one element of the right pertaining to names (the right to have and bear one's own name) as an unrestrictable fundamental right, and defining other elements (e.g. the rights to choose, change and amend one's name) as rights that may be restricted in line with Article 8 para. (2) of the Constitution.

The Constitutional Court performed a constitutional review in respect of the submitted petitions with due consideration to the above requirements and criteria.

IV

1. On the basis of the classification of the right pertaining to names and the elements thereof, the primary task of the Constitutional Court is to provide an answer to the petitions objecting to the level of regulation of the field in question.
The complaints address the following two aspects: on the one hand, regulation at the level of a Law-Decree, and on the other hand, regulation at the level of decrees by the Council of Ministers and the Ministry of Interior. In the case of both aspects, the petitioners urge the regulation of the matter at the level of an Act of Parliament.
In the established practice of the Constitutional Court, Law-Decrees have been acknowledged as statutes of a level equal to that of Acts of Parliament. [Decision 7/1994 (II. 18.) AB, ABH 1994, 68, 71], moreover, the Constitutional Court explicitly stated in its Decision 20/1994 (IV. 16.) AB that "... Law-Decrees in force qualify as Acts of Parliament as far as the application of Article 8 para. (2) of the Constitution is concerned." (ABH 1994, 106, 112)
Accordingly, the Constitutional Court has rejected the petition aimed at the establishment of the unconstitutionality of regulating the matter in question at the level of a Law-Decree.
The petitions objecting to the legislative level of Section 1 of the CMD as well as Sections 4 and 5 of the MID shall be answered by the Constitutional Court when examining the contents thereof (point IV. 2.5).

The remark by one of the petitioners that the so-called "Book of Forenames by Ladó" contains the names that may be registered, in spite of the fact that the book is not a source of law, is indirectly related to the study of sources of law. Section 27 para. (4) of the LDR provides for the following in this respect: "… In the register of births, a maximum of two forenames – unless otherwise provided by a statute – shall be recorded in the order specified by the parents, chosen from the names listed in the Hungarian Book of Forenames with a

supplement on the forenames of ethnic minorities, corresponding to the gender of the child…". Thus, at present, the Hungarian Book of Forenames is – according to the provisions of the LDR – an important part of the LDR, which may not be practically implemented without it. Choosing, changing and amending one's name are rights restrictable by the State with the application of the test of necessity and proportionality. Such restriction may be applied in practice – with due consideration to constitutional requirements – in the form of ordering the use of a specific book. This is what happened in the present case, and it is not considered to be a restriction by the State violating a fundamental right. Therefore, the Constitutional Court has rejected that part of the petition, establishing that the mere fact of ordering in the LDR the application of the Book of Forenames is not unconstitutional, and thus Section 27 para. (4) of the LDR has not been annulled.

2. The majority of the petitions request a decision by the Constitutional Court in questions related to the contents of the provisions concerned. It is the common basis of these petitions that everyone has the right – closely linked to his personality – to decide what name he wishes to bear, and therefore the name may not be subject to discretion by the Minister of Interior. Although the petitioners agree that a family name should not be allowed to be changed to a historical name, they refuse on the ground of unconstitutionality the additional restrictions as well as the reference to permission. In addition, they claim that the prohibition on changing a name which is the result of a former name changing – or limiting that to exceptional cases – is unconstitutional, too. They hold that the right to change one's name may be exercised by citizens not only once, but on any number of occasions according to their choice. The petitions complain about the present order of bearing and changing both family names and forenames, including the limitation in the form of the requirement of consisting of only one word.

2.1. In the constitutional examination of the contents of the petitions, the Constitutional Court started out from the historical-social determination of the rights related to one's name, in order to be able to set, in the case of the various constituents of the right pertaining to names, the division line between individual and public interest (i.e. between privacy and the scope of regulation by the State).

For the above examination, it is indispensable to have a brief look at the historical antecedents and social traditions:

Both the evolution of the right pertaining to names and the legal protection thereof are a relatively late product of the development of law. The importance of symbolic signs has been acknowledged for a long time in the development of law, as reflected in the evolution of the coat of arms law, too, but at first these distinctions were not applied to individual persons, i.e. living human beings, instead, they were intended to represent what community or group the individual belonged to. In the early days, the use of names followed the same route of development, and at first the official purpose of names was the distinction of big families or kins. In fact, certain rules and customs related to wearing clothes played the same role, representing one's belonging to a certain layer as well as to a certain age group within the given society, and they did not emphasise the individual's identity. However, the development of so-called forenames, nicknames and cognomina served the purpose of distinguishing individuals within the various groups. For inheritance law reasons, the former group of names, i.e. names designating the community or group had legal relevance.

The bourgeois era put the individual – as a proprietor – into the foreground, and it laid down the foundations of modern concepts of the right pertaining to names and the right to use one's name in the interest of distinguishing individuals unconditionally and reliably.

The development of State (and other) administrations in the modern age supported the appearance of names as we know them today: a composition of family name and forename. As early as at the time of the absolutist State of the late feudalism but especially in the State administration of the subsequent bourgeois era, it was important to have the subjects – or later the citizens – of the State registered for the purposes of taxation, military service, schooling and for the efficient implementation of other State tasks, and the registers kept by the Churches also needed names.

Consequently, the composition of family name and forename is basically a result of the increased development of the State in the 18th century. It was an axiom of governance for the absolutist State apparatus of that era to know its subjects and the way they lived. It is not by coincidence that the first national censuses called "conscriptiones regnicolares" were held in that century.

However, in everyday life, the colourful customs of giving names inherited from the ancestors lived on independently from the above developments, and in the various regions, due to the long persistence of the living together of big families, in addition to family names, the use of forenames (originally called Christian names) and cognomina remained important.

It follows from the above that names are given by people and they belong to living human beings, and the State may only interfere at the level of registration and as far as the requirement of registration is concerned, and in the course of such interference it must take into account the actual (social) conditions. As a direct consequence, the State may not determine the essential content of the name to be registered. This means that while the content of the right pertaining to names is formally defined by the individuals concerned, its actual content is determined by social customs, conventions and religious traditions, which content the State, as one disposing over the organisational structure of registers empowered to enter records of public authenticity, may only register.

At the same time, it is emphasised by the Constitutional Court that "the right pertaining to names" is not treated as having absolute validity, and so not all of its elements are exempted from restriction (restrictability).

Nevertheless, according to point III/4, there is a core of personal autonomy and self-determination in the scope of the right pertaining to names that may not be disposed over by anybody else and that represents the "untouchable" essence of the individual person through the right to have and bear his own name. Here, the essential content is in fact the right to have and bear one's own name. Consequently, in respect of the right to have and bear one's own name, no restriction by the State is acceptable as it would be incompatible with the Constitution. Neither any aspect of convenience, nor technical difficulties which could be otherwise overcome may justify restriction by the State. Not even a "state of emergency" would justify interference by the State. However, it is the primary obligation of the State to prohibit the violation of such rights by others or intervention into the rights concerned, and to protect injured parties. In this field, the presence of the State is primarily manifested in registering with public authenticity the facts related to names in the interest of securing protection. In this respect, regulation (restriction) by the State may not relate to the untouchable essence (fundamental social determination) of the basic right [in the wording of Article 8 para. (2) of the Constitution: fundamental right]. [Decision 20/1990 (X. 4.) AB, ABH 1990, 69, 71; Decision 7/1991 (II. 28.) AB, ABH 1991, 22, 25]

In view of the above, the Constitutional Court holds the following: as the natural existence of personality is independent from the State, the legal existence thereof does not make it possible for the State as an external party to determine – in an unlimited manner and disregarding the will of the affected parties – the legal enforceability and the essential content of the above-mentioned aspect of the right pertaining to names.

2.2. The right of freely choosing, changing and amending one's name (as part of the right pertaining to names) is also a personality right serving the purpose of distinguishing individuals and it can – similarly to the above and on the basis of Article 54 para. (1) of the Constitution –, as part of the right to self-determination, gain the protection enjoyed by fundamental rights according to Article 8 para. (2) of the Constitution, and as such it deserves regulation by way of an Act of Parliament.

"Among the fundamental rights and obligations of citizens, Acts of Parliament shall be adopted in particular on … inheritance, the inherent rights and obligations of persons, and rights and obligations pertaining to intellectual property." (Section 5 item f) of the AL)

When regulating inherent rights on a statutory level, the State is obliged to prohibit – with due regard to the criteria of necessity and proportionality – the violation of these rights and interference therewith by others as well as to protect the injured party. As the general prohibition of interference with personality rights applies to the State itself as well, the presence of the State in the above field may only manifest itself in registering with public authenticity the facts related to the right pertaining to names in the interest of securing protection. One may ask, however, how the State may express its obligation of protection specified in Article 8 para. (1) of the Constitution when registering the facts related to the right pertaining to names. Is it merely a passive participant of the procedure or an active participant who may contribute to the development of the conditions of an efficient system of protection and guarantees?

Here, the weight of State guarantees is different, depending on whether the State strives for protecting the registered names or performs the statutory regulation of other aspects of the right pertaining to names. In the former case – where the given aspect of the right pertaining to names enjoys protection as applicable to fundamental rights – the State is not allowed to freely interfere with individuals' privacy. Beyond doubt, the right to have and bear one's own name falls into this category. At the same time, in the case of the right to choose, change and amend one's name, the scope of potential State interference is wider, despite the fact that these elements of the right pertaining to names are also protected by Article 8 of the Constitution. Such interference may, however, be duly justified by the (public) interest in the uniformity of the system of registers of public authenticity and in legal certainty, which may, for example, result in the different handling of family names and forenames.

Consequently, it is deemed constitutional when, in the latter scope (i.e. choosing and changing one's name) the State, defining the relevant conditions and restrictions, handles family names and forenames separately and assumes – on the ground of public interest – that the bearer of a

name does not have the same freedom of disposal over his family name as over his forename. For example, in the case of choosing, changing and amending a family name, a State regulation refusing the applicant's request to change or amend his name (as often as he wants) is not deemed unnecessary and disproportionate (thus not violating human dignity). Such State restriction clearly represents the public interest that the free choosing, changing or amending (on any number of occasions) of family names in the individual's absolute discretion should not lead to making it possible for someone to escape from the performance of his obligations (e.g. disappear from the list of debtors), or to the occurrence of procedural problems and problems of identification in the case of persons with a criminal record.
It is the right and, at the same time, the obligation of the State to elaborate a regulatory system at the level of Acts of Parliament that renders possible both the realisation of the fundamental personality right (to self-determination) manifested in the above-mentioned elements of the right pertaining to names, and regulations that respect the constitutional framework and ensure uniformity and legal certainty. It remains within the above framework when the State – mainly in determining the rules applicable to giving, changing and amending forenames – uses the categories of "important cause" or "real reason", particularly if these are defined in detail.

To define the limits of such "restrictability", the Constitutional Court has surveyed the relevant issues in the international practice.
In Austria, a "serious cause" means that the first forename chosen must be "usable" and one that cannot harm the interests of the child (§ 21. Abs. 2, Pst.G.); in Belgium, neither a family name nor a forename may be registered if it "causes any disturbance" or harms the child or others. (Cc. art.216., § 1./L.14-7-1976); in France, too, parents are prohibited from choosing for their child a forename which alone or together with the family name would clearly be contrary to the interests of the child or lead to the infringement of others' family names (Art. 57 Cc-L 93-2208-01-1993);
in Greece, a forename may only be changed if it causes difficulties in the legal or social contacts of the person who bears the name (N. 2130/1993 Art. 8) and if the forename applied for does not violate "good morals"; in the Netherlands, the registrar refuses to record a forename if it is of an indecent character or if it is identical to an existing family name (except for family names also used as forenames) (BW. Vol. 1, Art. 4); in the Federal Republic of Germany, family names that sound repulsive or ridiculous or give ground for ambiguous or offensive puns justify the changing of the name. In addition, however, the registration of a

requested family name may be refused on “due grounds”, such as, for instance, a name often occurring in the applicant’s environment and thus possibly leading to confusion; a name difficult to write down or pronounce; or a name closely associated with a criminal offence. It is, however, clear from the German regulation that there is a lesser public interest in maintaining existing forenames. According to Article 70 of the PstG., words that are not forenames according to their essence may not be chosen. According to the legal practice, boys may only have man’s names, while girls may only have woman’s names (§ 262 DA). An exception is the name “Maria”, which may be used as a supplementary forename – together with a man’s name – in the case of boys, too (BVEwGE Vol. 31, p. 130).

In Italy, too, it is prohibited to choose a name that sounds ridiculous (AStC, Art. 72), and in Portugal as well, a forename must be one that clarifies the gender of the child, it may not contain any political reference, and it must be one that may not be confused with fantasy names or family names, or names that designate objects, animals or characteristics, unless such a name is accepted in the Portuguese onomatology as a common forename. [CRC Articles 128 (2, 3, and 4), and 130 (3)] In Spain, too, extravagant, ridiculous, indecent or subversive forenames, family names and pseudonyms are rejected. The legal regulations also prohibit the choice of forenames containing more than two single components or more than one compound element, as well as ones that might cause confusion about the gender of the person who bears the name (art. 54 LRC. /1977/, 192 RRC /1977/, R. 2-7-1980). In Switzerland, no forenames of a shocking or nonsensical character may be chosen, similarly to ones that are clearly contrary to the interests of the child or of third persons, or ones that have no clear reference to the gender of the child (OEC Art. 69); Article 16 of the Population Act of Turkey prohibits the choice of forenames that are incompatible with the national culture, public decency, public morals, or the law.

A judgement of the European Court of Human Rights adopted in 1996 (Eur. Court H.R., Case of Guillot v. France, judgment of 24 October 1996) clarified the limits of interference by the State in relation to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and promulgated in Hungary in Act XXXI of 1993.

According to Article 8 of the Convention:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

According to the holdings of the Judgement:

"It did not violate Article 8 of the Convention (right to respect for private and family life) that the registrar refused the recording of a forename chosen by the parents but not listed in the registries applicable in accordance with the Act on Choosing Names, and that the court approved the above refusal, as the authorities in charge accepted the secondary application and registered the chosen forename – although in a different form. Nevertheless, the child shall have the right to use freely the originally chosen name in her private contacts."

2.3. The Constitutional Court holds that – in the field of choosing, changing and amending names – the State may set conditions that respect constitutional limits and restrictions. This does not mean, however, that the State would not, at the same time, be obliged to secure in every possible way the conditions for the realisation of the inherent right manifested in choosing, changing and amending one's name – for example, through a continuous expansion of the scope of available names. This requirement is met if the State orders the application of a register of names (in our case, the Hungarian Book of Forenames) the contents of which are expanded on a continuous basis. Thus the term "listed" as used in Section 27 para. (4) of the LDR does not mean that the list of names constitutes a catalogue of names fixed once and for all.

2.4. The Constitutional Court points out that, in view of the principles of uniformity and legal certainty representing public interest, the right of regulation itself of the State in respect of choosing, changing and amending names is not unconstitutional. State interference violates the identity and the right of disposal – and thus the right to human dignity – of the person who bears the name only if it is unnecessary and causes an injury to rights disproportionate to the desired objective.

In the above respect as well, the legislature is obliged to introduce a modern regulatory framework complying with constitutional requirements that ensures both a real chance for the feasibility of applications for bearing and changing names – as part of inherent rights – and the setting up of a State system of registers which is unified, safe, reliable and predictable.

2.5. The Constitutional Court holds that matters of significance related to bearing and changing names may not be regulated – even with changed content – in either the CMD, the MID or the LDR-IO.

Section 1 of the CMD as well as Sections 4 and 5 of the MID contain licensing competences that cannot be separated from inherent rights and obligations, which are to be examined as belonging to the fundamental rights and obligations of citizens according to Section 5 of the AL. As such, they are subject to "regulation by Acts of Parliament."

In view of the above, the Constitutional Court has annulled Section 1 of the CMD as well as Sections 4 and 5 of the MID, but, applying the same criteria, it has not found unconstitutional Section 1 of the MID, according to which "The application for changing a name … shall contain the circumstances justifying the changing of the name." This is so because the latter is a provision of a procedural-technical nature not closely related to the essential contents of inherent rights and obligations.

The Constitutional Court has also established the unconstitutionality of and annulled the provision under Section 48 para. (3) of the LDR-IO for two reasons: on the one hand, in view of the fact that the petitioner's – registered – name as "inherited" from his ancestors is under the strict protection enjoyed by fundamental rights, and such protection is applicable against the State as well; on the other hand, a statute of lower level [Section 48 para. (3) of the LDR-IO] violates the provision of a statute of higher level [Section 31 para. (1) of the LDR]. In the case concerned, it is clear that the whole of Section 31 para. (1) of the LDR is under constitutional protection, and the undersecretary of state is not empowered to restrict that (by prescribing the position of the letter sign in the name). Therefore, Section 48 para. (3) of the LDR-IO specifies the rule on the position of the letter sign in the name – in relation to Section 31 of the LDR – in an unconstitutional manner. In the given case, this has caused an unconstitutional restriction of the right to bear one's name, since it has consequently resulted in changing names in the case of which the distinguishing letter sign was registered after the ancestors' family name, as proven by documents.

The name resulting from determining the position of the distinguishing letter sign in the case under review is completely strange to the petitioner, identifying neither him nor his family. The changed position of the distinguishing letter sign created a new name not suitable for indicating any connection with the ancestors. In the case reviewed, the collision of the LDR and the LDR-IO practically resulted in the petitioner's name being taken away by the State, without the petitioner's consent, and the State forcing him to bear the name determined by it.

However, every man has the right to have and bear his own name: just like the fundamental right to self-identification, it is an inalienable and inherent human right, which may be neither taken away, nor restricted by the State concerning its essential contents. However, in the case concerned, the State itself defined the essential contents of the fact to be registered.
In view of the above, the Constitutional Court has annulled Section 48 para. (3) of the LDR-IO as a provision causing a violation of a fundamental right.

2.6. One of the petitioners also claims the unconstitutionality of the provision in Section 27 para. (4) of the LDR making a distinction between the rules on choosing names by Hungarian citizens of Hungarian ethnic origin and by Hungarian citizens claiming themselves to be members of an ethnic minority. According to the petitioner, there is a contradiction here which can only be resolved by the authorities applying the law by abstaining from the practical application of the provision mentioned above.
Section 12 para. (1) of the ANEM guarantees for ethnic minorities the right to choose names "freely", while Section 27 para. (4) of the LDR uses the term "in line with their ethnicity". Pursuant to the ANEM, a person belonging to a minority has the right to choose his own forename and the forename of his child "freely", to have his forename and family name registered in accordance with the rules of his mother tongue, and to have them indicated in official documents as long as such indication complies with applicable statutes. The registrar shall register the name in the chosen form.

Undoubtedly, the term "in line with their ethnicity" in Section 27 para. (4) of the LDR and the word "freely" used in Section 12 para. (1) of the ANEM do not have the same meaning. It is clear that choosing a name "freely" offers a wider scope of options than designated by the term "in line with their ethnicity". Therefore, there is, indeed, a collision between the two statutory provisions, which necessitates an examination with respect to constitutionality.
"The Constitutional Court points out in principle that contradictions – or potential contradictions, depending on interpretation – in the statutory regulation of certain situations of life as well as (potentially) contradicting statutory definitions are not considered in themselves to cause unconstitutionality. Such a provision shall be deemed unconstitutional if, at the same time, it violates one of the provisions of the Constitution, i.e. if the contradicting regulation causes substantial unconstitutionality, …" [Decision 35/1991 (VI. 20.) AB, ABH 1991, 175, 176]
According to Article 68 para. (2) of the Constitution "The Republic of Hungary shall provide

for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages." It is clear from the above provision of the Constitution that Hungarian citizens who claim to belong to an ethnic minority participate in public affairs, foster their own culture, and use their native languages with due regard to their ethnicity, and similarly, the "use of names in their native languages" is also connected to their "ethnic" (minority) existence.

Therefore, the option provided for in Section 12 para. (1) of the ANEM, specifying that "a person belonging to a minority has the right to choose his own forename and the forename of his child freely" may not be interpreted as being without any limitations, but it may and must be interpreted as "in line with their ethnicity". Thus, the "freedom" of persons belonging to an ethnic minority is connected to their minority status, which is clearly reflected in the continuation of the quoted provision, according to which the above right of a person belonging to an ethnic minority is applicable in respect of having his "forename and family name registered in accordance with the rules of his mother tongue", and in respect of having those names indicated in official documents as long as such indication complies with applicable statutes. Consequently, this content element of Section 12 para. (1) of the ANEM can be revealed by interpretation; in view of this fact, the Constitutional Court has not annulled the wording "freely" in the provision concerned. This "freedom" to be exercised "in line with the ethnicity" of the person concerned is not contrary to Article 68 para. (2) of the Constitution, on the contrary, it can be deduced directly from that constitutional provision by interpreting the law.

In the case of Hungarian citizens of either Hungarian ethnic origin and or an ethnic minority origin, there are certain restrictions that may not be deemed unconstitutional. The essential core of the restriction is the same in the case of both groups of citizens: the traditions and customs of the ethnic group concerned (Hungarians and other ethnic groups). In the case of Hungarian citizens (who claim to be) of Hungarian ethnic origin, the above are summarised in the Hungarian Book of Forenames, the statutorily prescribed application of which according to Section 27 para. (4) of the LDR is deemed constitutional. This book contains the ethnic forenames of the Hungarian ethnic group as applicable in Hungary, and "appropriate forenames" can be selected from this book. Members of ethnic minorities living in Hungary and persons whose mother tongue is a minority language are allowed to bear forenames "in line with their ethnicity", too. [Section 27 para. (4) of the LDR] Such persons may only choose names from the names belonging to the category referred to above, and therefore they

may not bear any forename they would like to. Consequently, there is no such discrimination between Hungarian citizens of Hungarian ethnic origin and Hungarian citizens (who claim to be) of an ethnic minority origin that would manifest itself in Hungarian citizens of Hungarian origin having a restricted right to choose names and Hungarian citizens of an ethnic minority origin having a completely unrestricted one.

Accordingly, the Constitutional Court has rejected the petition concerned.

The Constitutional Court holds that beyond doubt, rights can be abused on the basis of the fact that persons belonging to a minority are not required to prove their ethnicity. Although it is clear that the legislator did not intend to allow persons who are not members of an ethnic minority to exercise the above right, the present manner and content of regulation do not exclude such a possibility. It is the responsibility of the State to prevent, by way of differentiating and rendering more accurate the relevant statutes (Acts), the development of such a practice, which – despite originating from the regulations – could ignore the actual regulatory intentions and will.

2.7. Nor does the Constitutional Court consider unconstitutional the provision in Section 27 para. (4) of the LDR, according to which – in line with the provisions in Section 27 para. (3) of the LDR – not more than two forenames may be entered in the register. This is so because the State may restrict the number of forenames that may be chosen (with due regard to the requirements of uniformity and legal certainty), that is, the determination of the number of forenames that can be given to a child is not an unrestrictable fundamental right. The Constitutional Court has evaluated in a similar fashion Section 27 para. (2) of the LDR, according to which "Family names consist of one word. The family name may consist of more than word only if the register entry of the parent whose name the affected person bears contains such a name." According to the LDR, bearing a compound family name is not prohibited as such, but it is limited to cases where the person affected can prove the existence of the (compound) family name with a record in the register. Applying the above restriction by the State is duly justified by the public interest in the uniformity of State registers and in legal certainty.

2.8. At the same time, the Constitutional Court has established the unconstitutionality of the provisions in Section 28 paras (1) and (2) of the LDR, according to which "(1) The registrar may on one occasion amend the forename of a minor under the age of 14 upon request by the parents." (2) When a person having more than one forename requests the exclusive bearing of

one of the forenames or the changing of the order of the forenames, the registrar shall on one occasion amend the original record …" This strict and rigid regulation does restrict the right of the persons directly affected [i.e. the "parents" under para. (1) and the "person having more than one forename" under para. (2)] to name changing to such an extent that their right of disposal is practically withdrawn. Interference by the State with the sphere of privacy to such an extent cannot be duly justified on constitutional grounds. The State has the right to limit – in accordance with the above – the number of forenames that may be chosen (and borne) to two; however, this right of the legislature does not include the application of an obligatory limitation in the form of allowing modification only once and accepting only one request for the exclusive bearing of one of the forenames or the changing of the order of forenames. In this case, the peremptoriness of the regulation itself is deemed a disproportionate restriction not justifiable on due constitutional grounds. Although one may appreciate the State's intentions to ensure uniformity and legal certainty (which are important principles as far as public interest is concerned), it may not implement these by limiting to a single occasion the exercise of the right of disposal of the affected persons in a field predominantly governed by social determinations.

However, the Constitutional Court emphasises that the number of name changes has no relevance in terms of constitutionality, i.e. allowing the changing of names two or three times would not in itself be constitutional, either. It is the peremptoriness of the regulation itself – allowing no derogation – that is considered unconstitutional, letting the State interfere with the private autonomy of citizens without due justification. Although, with reference to public interest, the State may choose a regulatory method and determine a regulatory content aimed at ensuring uniformity and legal certainty, this must, be done without categorically excluding future private initiatives aimed at modification. Such initiatives may be restricted by way of more precise and differentiated regulations, including legal and non-legal measures as well, but the State may not limit the number of such initiatives to one. Such State interference may not be justified even by constitutional concerns referring to public interest, as it would cause a disproportionate injury, which – since a fundamental right is at stake – is an unacceptable restriction by the State.

In view of the fact that Section 28 paras (1) and (2) of the LDR contain provisions of such content, worthy of increased protection, the Constitutional Court has annulled the peremptory, restrictive provisions referring to the limit of a single occasion.

The Constitutional Court points out in relation to Section 28 para. (1) of the LDR the following: the "person in charge" of the name changing specified in Section 28 para. (1) of the LDR is the applicant in this case, too, rather than the registrar acting on behalf of the State. Therefore, the term "may amend" shall not be construed as to attribute free discretion to the State (the registrar). Here, the task of the State is not more than the registration of a fact, the essential content of which is determined by the applicant citizen (here: the parent) and not by the State (the registrar).

2.9. A restriction of citizens' fundamental rights is claimed by the petitioner who complains about the regulations in force lacking legal remedies against the acts of the registrar. The petitioner claims this to be a violation of the provision in Article 70/K of the Constitution, according to which claims arising from infringement on fundamental rights, and objections to the decisions of public authorities regarding the fulfilment of duties may be brought before a court of law.

It was pointed out by the Constitutional Court earlier that the rights to self-identification and self-determination form part of the "general personality right" [Decision 57/1991 (XI. 8.) AB, ABH 1991, 272, 279]. It is an important element – among others – of the content of the right to self-determination that the individual may enforce his subjective rights transformed into claims at various State authorities and at the court [Decision 1/1994 (I. 7.) AB, ABH 1994, 29, 35].

The Constitutional Court has rejected the petition objecting to the lack of a judicial way on the following grounds:

a) When parents who are Hungarian citizens, who have the Hungarian language as their mother tongue and who do not belong to an ethnic minority [minorities listed in Section 61 para. (1) of the ANEM] ask for the registration of a forename which is not listed in the Book of Forenames, the registrar shall request – in the course of a constitutionally acceptable procedure – the "expert" opinion of the Institute of Linguistics of the Hungarian Academy of Sciences. This opinion shall, however, be an expert opinion and not an authoritative one, as the basis of the registrar's decision. An appeal may be filed against the registrar's decision with the Head of the County (Metropolitan) Public Administration Office, and if the request of the parents is again rejected, an appeal may be filed with the public administration court.

b) The authority in charge of registration shall inform the parents that if the registration of the requested name is refused, they shall have the right to go to court – with or without the negative expert opinion of the Institute of Linguistics in hand.

c) Against the decision of the court of guardianship on bearing one's name, or the decision of the registrar on registering or refusing the name, an appeal may be filed in accordance with the provisions of Act IV of 1957 on the General Rules of State Administrative Procedure as amended several times, and the affected persons may file a claim to the court against the public administration decision of second instance.
Therefore, contrarily to what is stated by the petitioner, there is a possibility for a judicial way. On this ground, the Constitutional Court has rejected the petition.

2.10. One of the petitions challenges the constitutionality of the provisions in Section 4 and Section 5 para. (1) of the CMD also on the basis of their violating the rules specified in Article 54 para. (1), Article 59 para. (1) and Article 66 para. (1) as well as Article 70/A of the Constitution. It is claimed that these provisions of the CMD ["Section 4 If the wife bears the family name or the full name of her husband, changing the name of the husband shall result in the change of her name as well. Section 5 para. (1) A married, divorced or widowed wife shall not have the right to change her name – in the procedure of name changing – gained by way of marriage."] also violate the Constitution.
According to Article 16 point 1 of the Convention on the Elimination of All Forms of Discrimination against Women adopted on 18 December 1979 in New York (hereinafter: the Convention) promulgated in Law-Decree 10/1982, "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:"
"g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation."
The Constitutional Court emphasises that the bearing (use) of names by women as examined in the above respect needs to be regulated at the level of Acts of Parliament rather than at that of Council of Ministers Decrees. In her case, too, this is the only way the requirement specified in Article 26 of the Covenant according to which "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground…" can be met.

In relation to the case under examination the Constitutional Court establishes that the act of marriage does not automatically result in an obligation of changing the woman's name [Section 26 para. (1) of the AMFG].

Accordingly, the woman to be married may decide freely whether to bear the name of her spouse or not. If she decides to bear it, it shall be constitutional to provide statutorily that she may not change the name taken up. Upon the termination of their marriage, she will be free to decide again whether to keep on bearing the name chosen or to return to her maiden name. The woman's free choice is realised in an unrestricted manner. A violation of the right to bear one's name could only be established if the above right to choose were granted neither upon marriage nor upon its – potential – termination.

Consequently, the Constitutional Court has rejected the petition seeking establishment of the unconstitutionality and declaration of the nullification of Section 4 and Section 5 para. (1) of the CMD.

Nevertheless, the Constitutional Court holds that the Hungarian regulations in force do not fully comply with either the provisions in Article 16 point 1/g) of the Convention or the ones in Article 26 of the Covenant. The above treaties – contrarily to Hungarian law – provide for the right to change one's name upon marriage not only for women but for men as well.

According to the Convention, "States Parties shall … ensure, on a basis of equality of men and women: … the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation."

Article 26 of the Covenant provides for the following: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
The provision challenged by the petitions is not in line with the above international treaties – accepted by and promulgated in Hungary as well – and the provision challenged by the petition violates the provision in Article 7 para. (1) of the Constitution according to which "The legal system of the Republic of Hungary accepts the generally recognised principles of international law, and shall harmonise the country's domestic law with the obligations assumed under international law."
The Constitutional Court notes that the Hungarian regulations in force are also contrary to the judicial practice related to the European Human Rights Convention. [See: Eur. Court MR,

Burgherz v. Switzerland judgment of 22 February 1994, Series A. no. 280-B]
The legal regulations in other countries have already been shifted in the above direction: in Belgium – based on customary law – the wife may bear the name of her husband, and the husband may "supplement" the family name of his wife with his own family name; in France, although the registered name is deemed "sacred", the wife may bear the name of her husband and may use it in official documents, and the husband, too, may "add" the family name of his wife to his own name; the registered names remain authentic officially; in Greece, any spouse may use in his/her social relations or add to his/her own family name the family name of his/her spouse upon approval by the other party; in Germany, the Federal Constitutional Court, in its decision of 5.III.1991 [BGBI. I.s. 807] annulled the second sentence of BGB § 1355. Abs., providing that the name of the husband shall automatically be the family name if the spouses do not expressly specify their family name; in Switzerland, the spouses use a common family name, which is the husband's family name. Engaged couples, however, may be allowed – if requested so and justified by their legitimate interest – to use the family name of the wife from the moment of the marriage on.

According to Section 26 of the AMFG, for the time being, only women are allowed to bear the husband's name upon marriage, and there is no provision in the regulation about the husband's right to bear the family name of his wife.
Section 49 of the ACC regulates the competence of the Constitutional Court concerning the establishment of unconstitutional omissions. According to Section 49 of the ACC, an unconstitutional omission of legislative duty may be established if the legislature has failed to fulfil its statutorily mandated legislative duty, and this has given rise to an unconstitutional situation. According to the established practice of the Constitutional Court, the legislature shall be obliged to legislate even when there is no concrete mandate given by a statute if the unconstitutional situation – the lack of legal regulation – is the result of the State's interference with certain situations of life by way of a statute, thus depriving some of the citizens of their potential to enforce their constitutional rights. [Decision 22/1990 (X. 16.) AB, ABH 1990, 83, 86] The Constitutional Court also establishes an unconstitutional omission of legislative duty in the case of the lack of the statutory guarantees necessary for the enforcement of a fundamental right. [Decision 37/1992 (VI. 10.) AB, ABH 1992, 227, 231]
The Constitutional Court establishes an unconstitutional omission of legislative duty not only if there is no regulation at all regarding a certain subject [Decision 35/1992 (VI. 10.) AB, ABH 1992, 204-205] but also if any statutory provision with a content deducible from the

Constitution is missing from the regulatory concept concerned. [Decision 22/1995 (III. 31.) AB, ABH 1995, 108, 113; Decision 29/1997 (IV. 29.) AB, ABH 1997, 122, 128; Decision 15/1998 (V. 8.) AB, ABH 1998, 132, 138] Even when an unconstitutional omission is established due to the incompleteness of the content of the regulation concerned, the omission itself is based on the non-performance of a legislative duty deriving either from an explicit statutory authorisation or – if there is no such authorisation – from the absolute necessity to have a statutory regulation. [Decision 4/1999 (III. 31.) AB, ABH 1999, 52, 57]

According to the Constitutional Court, it is "a legislative duty deriving from the absolute necessity to have a statutory regulation" that the legislature should guarantee the enforcement of the provisions in Article 66 para. (1) of the Constitution, namely that "The Republic of Hungary shall ensure the equality of men and women in all civil, political, economic, social and cultural rights."

Therefore, the contents of Section 26 of the AMFG have caused an unconstitutional situation by not allowing men to bear the family name of the wife upon marriage.

In view of the fact that the adoption of the AMFG preceded the adoption of the AL, the Constitutional Court refers to the following:

According to Section 61 para. (2) of Act XI of 1987 on Legislation (hereinafter: the AL): "The present Act shall not affect the force of any statute, decision, directive, standard, price fixing or legal guidance adopted before the entry into force of the present Act." The reasoning of the Bill concerning the Section in question specifies the intentions of the legislature as follows: "This provision is aimed at preventing any disturbance in the legal life caused by the application of the Act. In respect of the statutes, decisions, directives, and legal guidance adopted before the entry into force of the present Act, the provisions of the Act shall be put into practice in the course of reviewing the above, on a continuous basis."

The Constitutional Court holds that the rule specified in the AL does not violate any constitutional provision. On the contrary, it is in line with Article 2 para. (1) of the Constitution declaring the Republic of Hungary to be a state under the rule of law. Legal certainty – the preservation of which is aimed at by the provision of the AL – is an important element of the rule of law. [Decision 45/1991 (IX. 10.) AB, ABH 1991, 206, 207]

However, the Constitutional Court added the following:

"The Constitutional Court – in line with its resolution in principle about its practice [Resolution of the Full Session 2/1991 (X. 29.)] – shall refrain from annulling on the mere basis of their formal unconstitutionality statutes that had not been unconstitutional in respect of the hierarchy of statutes at the time of their adoption before the entry into force of Act XI

of 1987 on Legislation (hereinafter: the AL) if such statutes became unconstitutional later on the ground of not having been adopted at the appropriate level of legislation; however, if in addition to formal unconstitutionality, the contents of the statute also violate the Constitution, the Constitutional Court shall annul the statute in the framework of posterior constitutional review. This practice of the Constitutional Court applies to both statutes issued on the basis of authorisation and to authorising statutes." [Decision 58/1991 (XI. 8.) AB, ABH 1991, 288, 289-290; Decision 61/1995 (X. 6.) AB, ABH 1995, 317, 318; Decision 617/B/1995 AB, ABH 1997, 814, 816]

In the opinion of the Constitutional Court, the provisions specified in Section 26 of the AMFG grant the right to name changing upon marriage to women, but do not grant the same to men. In view of the above, the Constitutional Court has not annulled the provisions of Section 26 of the AMFG, but it has established an unconstitutional omission concerning the deficiency in the statute.

2.12. The Constitutional Court holds that the contents of Section 26 para. (4) of the AMFG are not unconstitutional on the basis of the following provision either: "In the case of a new marriage, the wife may not bear the name of her former husband with the affix referring to marriage [paragraph (1) items a) and b)], and she shall not regain the right to do so even if the new marriage is terminated."

In the opinion of the Constitutional Court, it is not unconstitutional when the State refuses to assist, through the legal regulations, a woman (or even a man, in view of what has been argued under point 2.11) in taking up again the name borne in the first marriage after the termination of the second marriage. Public belief, social-historical traditions as well as the protection of the personality rights of other family members (in closer or farther connections) affected by the repeated taking up of the name offer adequate grounds for the State's refusal of such requests in the form of a legal regulation representing public interest. The above regulatory independence of the State is not affected by the fact that the former husband concerned would approve of the repeated use of his name. The Constitutional Court points out that the wife's name chosen upon marriage as provided for by the law shall – upon registration – become her own name, which she shall be entitled and obliged to bear after registration as it is one of the determinants of her identity. However, taking into account the fact that this right, which is an obligation as well, is connected to the wife's marriage, it is

justified that the Act requires the existence of a direct or at least an indirect connection referring to the former marriage. With the new marriage of the former wife, her links to her former marriage are completely cut in a legal sense. She becomes married again, acquiring a legal status representing that she has got a husband, and this status shall determine her right pertaining to names at least with regard to the bearing of the name referring to her former marriage. If it were not like that, the name of the person – suited to reflect her individuality and identity – would refer deceivingly to her family law status. Therefore, the objections raised by the petitioner on the basis of constitutional concerns against Section 26 para. (4) of the AMFG are not well-founded.

With the termination of the marriage and with the new marriage the "derived" name borne with regard to the former marriage loses its ground of origin, and it may only be regained through a repeated marriage with the former husband. All these changes result from the wife's own determination and will, and therefore they do not violate the fundamental right to human dignity. By allowing the wife in the case of more than one marriage to use her husband's name gained in her last marriage only, the challenged rules indeed comply with the provision of the Constitution protecting marriage. Therefore, the Constitutional Court has established no violation of the right to human dignity and rejected the petition.

In addition, the Constitutional Court points out that the statutory provisions challenged by the petitioner are not in a relevant relation with the rules of the Constitution on the protection of the good standing of one's reputation, secrecy in private affairs and personal data.

With reference to the alleged violation of the prohibition of discrimination, the Constitutional Court refers to its established practice, according to which Article 70/A para. (1) of the Constitution raises the requirement for the legislature that, when determining rights and obligations, it must treat as equals without undue discrimination subjects of law who are in the same position [Decision 30/1997 (IV. 29.) AB, ABH 1997, 130, 136]. In the context referred to by the petitioner, there are no subjects of law in the same position. The Constitutional Court pointed out in its Decision 995/B/1990 referred to above that the decision about marriage is the first common decision taken by the couple to be married, in the course of which the bride makes a declaration about the name she will bear after the marriage ceremony. Therefore, it is the decision of the wife to choose one of the options specified by the law, with the consent and approval of the husband-to-be, and the chosen name shall become the wife's own name (ABH 1993, 515, 521). Thus, the statutory provision that upon the termination of marriage the former wife may keep on bearing the name of her former husband means nothing more than – independently from the fact of the marriage being

terminated – that she may keep on bearing her name gained through the marriage. In other words, the termination of marriage does not automatically result in an obligation to change one's name. It is a different situation when – as a result of a new marriage – the former wife loses her former wife's name and the right to bear that name. In this case her new name shall be the one borne in the new marriage, chosen in accordance with Section 26 para. (1) items a)-d) of the AMFG. Consequently, the two situations are not comparable to each other, and so no violation of the prohibition of discrimination can be established in respect of the challenged provisions.

In view of the above, the Constitutional Court has rejected the petition seeking the establishment of the unconstitutionality and declaration of the nullification of Section 26 para. (4) of the AMFG.

The petitioner also claims the unconstitutionality and requests the nullification of Section 26 para. (5) of the AMFG, according to which "Deviations from bearing the name chosen in accordance with paragraphs (1)-(3) may only be permitted by the authority entitled to change the name."

In the opinion of the Constitutional Court, there is no connection between the contents of the quoted statutory provision and Article 70/A para. (1) of the Constitution; accordingly, it has rejected the petition seeking the establishment of the unconstitutionality and requesting the annulment of Section 26 para. (5) of the AMFG.

2.13. One of the petitioners claims the unconstitutionality and asks for the annulment of the provision in Section 15 para. (4) of the LDR according to which "The preliminary marriage license issued by the court of guardianship for a minor shall be valid for 6 months from the date of issue."

The Constitutional Court holds that there is no connection to be assessed between Section 15 para. (4) of the LDR and Article 66 para. (1) of the Constitution referred to by the petitioner. Consequently, it has rejected the petition aimed at the establishment of the unconstitutionality and the annulment of the provision concerned.

2.14. Another petitioner objects to the registrar having refused to record the requested second forename "Györgyike" with reference to the book of forenames, according to which the name "Györgyi" may be registered only. In view of the fact that meanwhile the requested name has been entered into the Hungarian Book of Forenames, today it is possible to change the name

to the desired one. (See János Ladó – Ágnes Bíró: Hungarian Book of Forenames, Budapest, 1998, p. 180)
Accordingly, the Constitutional Court has refused the petition.

3. The Constitutional Court points out that the majority of the anomalies detailed in the previous points are the result of the fact that the regulations pertaining to the given subject are dispersed and outdated, not taking constitutional requirements into account. (An example of outdated regulation: the LDR still contains a provision specifying that the registrar shall refuse to act in the marriage ceremony if the couple to be married has not taken part in a consultation before the marriage; however, the institution of obligatory consultation before marriage was terminated long ago.)
The legislature is obliged to harmonise the regulations with the related fields of law, with special emphasis on the new Acts of Parliament adopted since 1990 on keeping records of citizens' data and addresses, the protection of personal data and the right to acquire information on data of public interest. The harmonisation of these fields of law can only be achieved through the creation of a new Act on Registers (including the bearing and use of names, and complying with constitutional criteria).
Today, the lack of an unambiguous, clear and unified statutory regulation causes the violation of significant fundamental personality rights.

At present, registration and the administration of registers (and the related rights to bear and use names) are only partially based on promulgated legal norms in force, and some parts of them – even fields that would demand regulation at a high level – are latently regulated in the form of resolutions by the central authorities and interpretations of the law.

Therefore, the legislature itself is in charge of finding the right solution, and the same applies to the contents of the statutes as well.

The publication of the Decision in the Official Gazette (Magyar Közlöny) is based on Section 41 of the ACC.

Budapest, 3 December 2001

Dr. János Németh
President of the Constitutional Court

Dr. István Bagi
Judge of the Constitutional Court

Dr. Mihály Bihari
Judge of the Constitutional Court

Dr. Ottó Czúcz
Judge of the Constitutional Court

Dr. Árpád Erdei
Judge of the Constitutional Court

Dr. Attila Harmathy
Judge of the Constitutional Court

Dr. András Holló
Judge of the Constitutional Court

Dr. László Kiss
presenting Judge of the Constitutional Court

Dr. István Kukorelli
Judge of the Constitutional Court

Dr. János Strausz
Judge of the Constitutional Court

Dr. Éva Tersztyánszky-Vasadi
Judge of the Constitutional Court

Dissenting opinion by Dr. Attila Harmathy, Judge of the Constitutional Court

I do not agree with points 1, 2, 3, 4, 5 and point 6 d) of the holdings in the Decision. My arguments are the following:

1. Although the term “right pertaining to names” can be used as a heading under which various legal issues are examined in relation to names, I hold that one cannot prove the existence in constitutional law of the comprehensive category of the right pertaining to names with the sub-categories of choosing and changing the name.

Beyond doubt, there are constitutional issues related to names, but they do not have the same origin, and they have different legal characters and regulation. For example, Section 42 para. (3) of Act IV of 1952 on Marriage, Family and Guardianship provides that the forename of the child shall be determined by the parents. The parents’ right to choose the name of their child is connected to family relations, and it is in relation with Article 67 para. (2) of the Constitution, thus it does not originate in the right to human dignity. I do not see any reason for classifying the right pertaining to names as a fundamental right, but in a given

situation, the violation of this right can constitute a question to be examined in constitutional terms. Let me note that according to the European Court of Human Rights the determination of the child's name by the parents is a question falling within the scope of privacy and family life (Case Guillot v. France, Decision of 24 October 1996, Bírósági Határozatok Emberi Jogi Füzetek (Court Reports Human Rights Booklets) 1997/4, pp. 69-70).

The right to have one's own name is assessed differently. It was pointed out in Decision 64/1991 (XII. 17.) AB about the basic legal status of man that the right to human dignity is part of human existence. This right to human dignity is also manifested in the right to self-determination, according to which man may not be made an object (ABH 1991, 297, 308). It is also a manifestation of human dignity that man can represent his subjectivity through a distinguishing designation, i.e. having a name. Not only persons but also subjects of law in general are entitled to have a name distinguishing them from others. According to the consistent practice of the Constitutional Court, the fundamental rights are to be enjoyed not only by human beings, but in general by legal persons as well [Decision 21/1990 (X. 4.) AB, ABH 1990, 73, 82; Decision 28/1991 (VI. 3.) AB, ABH 1991, 88, 114; Decision 24/1996 (VI. 25.) AB, ABH 1996, 107, 110]. Nevertheless, in the case of legal persons and other subjects of law who are not natural persons, the above identification is of a narrower scope than in the case of human beings, as here the aspects of the security of transactions and of economic competition prevail. In the case of human beings, the name is important not only because of the participation in the circulation of goods and in competition, but also in respect of self-identification linked to human dignity. Accordingly, the name of human beings should enjoy a higher degree of protection.

The right to change one's name is partly connected to the foregoing, and it is partly different. The European Court of Human Rights examines the complaints related to changing one's name in the context of Article 8 (right to respect for private and family life) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, but it allows a very wide scale of discretion for the various States in respect of refusing their citizens' requests for name changing (see the Case – with reference to earlier cases – of Stjerna v. Finland, Decision of 25 November 1994, points 37-38). Marriage entails special questions about changing one's name, as it results in a change in status, and in constitutional terms, too, it necessitates the examination of aspects other than in other cases of changing one's name. Decision 995/B/1990 AB of the Constitutional Court pointed out about

changing one's name in the case of marriage that here the links to human dignity and reputation are not strong enough to justify acknowledgement as a fundamental right (ABH 1993, 515, 522). In the case of changing one's name for reasons other than marriage, it is important to protect the right related to names of persons whose family names are the same as the one requested by the person wishing to change his name. In addition to aspects of competition applicable to business life, the violation of self-identity is to be examined in constitutional terms.

The right to use one's name entails questions of a different nature than the ones referred to above. Approving the use of one's name for business purposes has been in practice for a long time. There are several decisions of the Curia [the Supreme Court] on using family names for business purposes. [Elemér Balás P., Személyiségi jog (Personality right), In: Károly Szladits /ed./, Magyar Magánjog (Hungarian Private Law), I. 664-665]

2. In my opinion, in the case of Section 28 paras (1) and (2) of Law-Decree 17/1982 on the Registers, the Marriage Procedure and on Bearing Names, unconstitutionality lies primarily in the fact that the forename is modified by the registrar. It is contrary to the nature of the right to a name based on human dignity and representing self-identity that the names of persons are given and modified by various organs of the State. In the regulatory system based on human dignity, the organs of the State may do nothing more than register the chosen name, in the course of which they check whether the statutory requirements for choosing and changing names have been complied with, and if they refuse to register a name on the basis of a violation of the rules, one may appeal to the court. I hold that both paragraphs of Section 28 providing for the amendment of names by the registrar should have been annulled.

The right of the parents to change the name of their child later after birth necessitates a separate examination. In this case, the categories of incapacity and limited capacity applicable to contracts under civil law are not applicable to the enforcement of the child's right to self-determination. Even a child under the age of 14 can form an opinion on whether he wants to have his name changed and what name he wants to have instead.

3. Point 4 of the holdings in the Decision annuls several statutes adopted in 1955 on the basis of the inappropriateness of the level of regulation. In line with its position elaborated in 1991, the Constitutional Court refrains from annulling statutes that had not been

unconstitutional in respect of the hierarchy of statutes at the time of their adoption before the entry into force of Act XI of 1987 on Legislation if such statutes became unconstitutional later on the ground of having been adopted at a level of legislation lower than appropriate [Decision 58/1991 (XI. 8.) AB, ABH 1991, 288, 289-290]. Therefore, the statutes listed in point 4 should not have been annulled. However, Section 1 of the Council of Ministers Decree 11/1955 (II. 20.) MT is an exception, as it allows the Minister of Interior to change the family names and the forenames of Hungarian citizens. In view of what has been argued in the preceding point, the State may not change the name of a person, and therefore this rule is to be annulled as unconstitutional. Section 48 para. (3) of Council of Ministers and Council Office Ordinance 2/1982 (VIII. 14.) MT-TH is another exception, as it is unconstitutional and is to be annulled because of containing a provision contrary to a statute of higher level.

4. Contrarily to point 5 of the holdings in the Decision, I hold that there is no unconstitutional omission of legislative duty. Decision 995/B/1990 AB already dealt with the issue of names changed at the time of marriage. It was pointed out that according to the customs developed at the end of the 18th century, women's names indicated the change resulting from marriage. This way of using names was connected to the social status of women, and name changing was related to the legal status of children and to property-related consequences. The verification of the married status of the woman, as well as the family status of the children may justify even today the traditional way of adding the affix "né" (corresponding to "Mrs" in English) to the family name of the husband or the attachment of the wife's own name to the name of her husband (ABH 1993, 515, 521-522). Thus, this solution does not cause an undue discrimination against the husband.

It was already established in Decision 9/1990 (IV. 25.) AB that not all forms of discrimination are prohibited. The prohibition of discrimination simply means that the fundamental right to human dignity may not be violated (ABH 1990, 46, 48). In view of historical traditions and the special characteristics of women, Decision 46/1994 (X. 21.) AB acknowledged the constitutionality of positive discrimination (ABH 1994, 260, 267). As far as discrimination not affecting fundamental rights is concerned, Decision 857/B/1994 AB stated that it is only unconstitutional in the case of being arbitrary or unjustified (ABH 1995, 716, 717).

In the present case, the changing of the name of the husband is not a fundamental right, and discrimination is not arbitrary. Neither the challenged statute, nor the resulting situation is unconstitutional. Therefore, the petitions should have been rejected.

5. Point 6. d) of the holdings in the Decision rejects the petitions. According to Section 4 of Council of Ministers Decree 11/1995 (II. 20.) MT on changing names, if the wife bears the family name or the full name of her husband, changing the name of the husband shall apply to the wife as well. This rule makes it possible for someone else to change the name of a wife without asking her and obtaining her approval. It constitutes a violation of the right to a name based on human dignity. Although the aspects of family protection justify the members of a family having the same family name, this result can be achieved through other means as well. The above rule, which violates the rights to self-determination and self-identification, should have been annulled.

According to Section 5 of the Decree mentioned above, a married, divorced or widowed wife shall not have the right to change her name – in the procedure of name changing – gained by way of marriage. In this case, too, the requirements of family protection can justify the restriction of the changing of the name, but not a full prohibition. The above regulation constitutes a withdrawal of a right, neither the necessity, nor the proportionality of which can be established. Therefore, this provision, too, should have been annulled.

Budapest, 3 December 2001

Dr. Attila Harmathy
Judge of the Constitutional Court

I second the above dissenting opinion.

Dr. István Bagi
Judge of the Constitutional Court

I second the above dissenting opinion with the exception of point 4 thereof.

Dr. János Németh
Judge of the Constitutional Court

Dissenting opinion by Dr. Éva Tersztyánszky-Vasadi, Judge of the Constitutional Court

1. I do not agree with point 1 of the holdings in the majority Decision. In my opinion, the

right pertaining to names may not be considered a fundamental right on the basis of the provisions in Chapter XII of the Constitution.

I agree with the Decision's starting point being the protection of the individual's autonomy. This, however, should have lead to the conclusion that there is no statutory definition, i.e. a statute, which would justify the Constitutional Court's deducing from the general personality right an abstract right pertaining to names (together with its other elements), interpreted within the framework of constitutional law and having safeguards against interference by the State. Nor is it justified that the Constitutional Court classifies this deduced right pertaining to names as a fundamental right and protects it as such. Similarly, I see no ground for deducing the "other elements" mentioned in the last sentence of point 1 in the holdings.

Act IV of 1952 on Marriage, Family and Guardianship (hereinafter: the AMFG) and Law-Decree 17/1982 on the Registers, the Marriage Procedure and on Bearing Names (hereinafter: the LDR) regulate the bearing of names.

Neither the AMFG, nor the rules pertaining to registers create or form – with some exceptions – family names or forenames. In the scope concerned, the AMFG regulates whose family name may become the child's family name, and who may determine the forename of the child. The rules on registration merely provide for an obligation to register the family name and forename that have been created.

This is what is manifested in the statute by providing that the name entered in the register shall be the forename and family name applicable to the affected person at the time of birth, marriage or death.

Registers are official records that prove – until the contrary is proven – the public authenticity of the data entered into them and the changes thereof. The registered name is the one to be used by the person in public acts and in official contacts.

The "right pertaining to names" is one of the special personality rights and it regulates the relations between persons rather than between the individual and the State. The right pertaining to names or – in other words – the right to bear one's name is regulated by Section 77 of the CC. According to the rules of civil law, everyone is entitled to bear a name. The

right to bear one's name prohibits the illegal use of a name, and protects the person from his name being used by anybody else.

Civil law allows persons to use any name they like in their private affairs, provided that such use does not violate the rights of others. The right to bear one's name equally protects the registered name and the unregistered one. As far as the protection under civil law is concerned, it is not a requirement for the name to be suitable for registration under the rules of public law, nor is it necessary to have the freely used name registered. Consequently, the act of registration is not based on the purpose of protection – it is related to the performance of certain tasks of the State.

The name of the person used in his private affairs and his registered family name and forename can be the same, or can be different.

The "general personality right" guaranteed in the Constitution, i.e. the fundamental right to human dignity concerns not the relations between persons, but the relation between the individual and the State. This right protects privacy from undue interference by the State. According to the practice of the Constitutional Court, the general personality right may be invoked for the protection of one's autonomy if none of the specified fundamental rights are applicable to the given set of facts.

Thus, based on an appropriate petition, it could be an actual constitutional question in what cases one may request with due ground – for the purpose of protecting his autonomy – that the law should allow the registration by the State of the name he wishes to bear, in order to allow him to use that name in public and in his official contacts as well.

2. I do not agree with point 5 of the holdings either, as in my opinion, it is not constitutionally necessary to allow statutorily, in Section 26 of the AMFG, the husband to bear the family name of his wife upon marriage.

Neither Article 7 para. (1) or Article 70/A of the Constitution, nor Article 16 point 1/g) of the Convention, nor Article 26 of the Covenant may be interpreted in such a way that the rules pertaining to men and women must be the same in all respects. According to the Convention on the Elimination of All Forms of Discrimination Against Women, "for the elimination of …

discrimination against women" the States Parties shall implement all necessary measures and guarantee equal personal rights, "including the right to … choose one's family name".

Section 26 of the AMFG complies with this requirement. According to the rule, the right of changing one's name in the case of marriage is enjoyed by the wife, as one of the spouses, and the bride is obliged to make a statement on choosing her name. The wife's right to change her name at the time of marriage is at the same time an obligation in the sense that she is bound to bear the name chosen freely. This is what is specified in Section 26 para. (5) of the AMFG, according to which deviations from bearing the chosen name may only be permitted by the authority entitled to change the name.

Article 26 of the Covenant and Article 14 of the European Human Rights Convention provide for a general prohibition of discrimination, but these provisions do not mention the right to change one's name. Not all instances of differentiation constitute prohibited discrimination, but only the ones that have no objective and reasonable ground. The international treaties invoked in the majority Decision do not provide for guaranteeing for the husband as well the right to change his name at the time of marriage. It is enough if the statutes offer a chance for the husband to take up his wife's family name.

In respect of the prohibition of discrimination there would be a constitutional concern if the law excluded the possibility of the husband taking up the family name of his wife, as the same is allowed for women in accordance with the above. The general rules on changing one's name allow even a married man to change his name, and do not preclude the possibility of the husband taking up the family name of his wife. He may specify the family name of his wife as his new name in the application aimed at changing his family name. It is not unconstitutional that the above rule is not contained in Section 26 of the AMFG, and that the general rules on changing one's name are the ones that allow the husband to take up the wife's family name.

In view of the above, there was no due ground for the establishment of an unconstitutional omission of legislative duty.

Budapest, 3 December 2001

Dr. Éva Tersztyánszky-Vasadi
Judge of the Constitutional Court

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