Decision 27/2015 (VII. 21.) AB

establishing that the second sentence of section 27/A (2) and the wording "the two-part birth surname and" in section 30 (3) of the Law-Decree No. 17 of 1982 on civil registries, marriage procedure and name-bearing, in force until 30 June 2014, is in conflict with the Fundamental Law and precluding its application in a pending case

The plenary session of the Constitutional Court, on the judicial initiative for a declaration that a law was in conflict with the Fundamental Law and was contrary to an international treaty – with concurring reasoning by Justices of the Constitutional Court *dr. Ágnes Czine, dr. Barnabás Lenkovics, dr. Béla Pokol* and *dr. András Varga Zs.* – adopted the following

decision:

1. The Constitutional Court finds that the second sentence of Section 27/A (2) and the wording "the two-part birth surname and" in Section 30 (3) of the Law-Decree No. 17 of 1982 on civil registries, marriage procedure and name-bearing, in force until 30 June 2014, was in conflict with the Fundamental Law.

2. The Constitutional Court finds that the second sentence of Section 27/A (2) and the wording "the two-part birth surname and" in section 30 (3) of the Law-Decree No. 17 of 1982 on civil registries, marriage procedure and name-bearing, in force until 30 June 2014, are not applicable in the case No. 9.K.32.048/2014/13 pending before the Budapest-Capital Administrative and Labour Court.

3. The Constitutional Court refuses the judicial initiative aimed at establishing that the second sentence of section 44 (2) of the Act I of 2010 on the Civil Registration Procedure is in conflict with the Fundamental Law and at its annulment.

This decision of the Constitutional Court shall be published in the Hungarian Official Gazette.

Reasoning

I

[1] By the ruling No. 9.K.32.048/2014/13-I, the judge of the Budapest-Capital Administrative and Labour Court suspended the hearing of the lawsuit for judicial

review of an administrative decision on the application for a name change, and submitted a motion pursuant to section 25 (1) of Act CLI of 2011 on the Constitutional Court (hereinafter: ACC). The petitioner judge sought a declaration that second sentence of section 27/A (2) of the Law-Decree No. 17 of 1982 on civil registries, marriage procedure and name-bearing – which has been repealed in the meantime –, applied in the proceedings before him, was in conflict with the Fundamental Law, and asked the Constitutional Court to establish that the contested provision of law was not applicable in the proceedings before the petitioner judge and, more generally, that it was not applicable in general. He also requested a declaration that the second sentence of section 44 (2) of the Act I of 2010 on Civil Registration Procedure (hereinafter: ACRP) currently in force is contrary to the Fundamental Law, given that it is literally identical with the contested provision of the LDCR.

[2] The petitioning judge made the following observations in relation to the case pending before him. In February 2014, the applicant submitted an application for a change of name. In that application, the applicant sought to have his surname registered without a hyphen and also sought a change of his first name – the deletion of the second part of his first name. In support of his application, he submitted that his surname is an old Hungarian double surname which, according to the rules of Hungarian spelling, should be written without a hyphen. His ancestors and brother, as well as his collateral relatives born before 1955 bearing the same surname, were registered this way, while the plaintiff's name was registered with a hyphen, unlike his father's and brother's name, according to the regulations in force at the time of his birth. He also explained that he had already applied several times – in 2002 and 2013 – for a name change so that his surname could be registered as a name without a hyphen, in accordance with his ancestors' name and the rules of Hungarian spelling. In 2002, his application was rejected, according to his submission, on the grounds that it was not possible to do so under the Law-Decree No. 19 of 1952 on Civil Registration, the Order No. 10/1955 (TK. 42.) BM, the LDCR and the Act XLV of 2002 on amending the LDCR. The administrative authority, which acted on second instance in the case, argued that the law-maker had incorporated Order No. 10/1955 BM with unchanged content into the LDCR, therefore, in 2013, his application was again rejected. In addition, the applicant explained the origin of his surname in support of his application. Also in the present petition, he referred to section 27 (2) of the LDCR, according to which the rules of Hungarian spelling shall prevail in the registration of names. To this he attached point 158 of the Hungarian spelling rules, which provides for the spelling of compound surnames. The applicant referred to the Decision 58/2001 (XII.7.) AB (ABH 2001, 527; hereinafter: CCDec), since in his view section 27/A (2) of the LDCR is unconstitutional on this basis. In support of his request for the deletion of his second first name, he stated that he did not use it.

[3] The Minister for Administration and Justice, who was responsible for civil registration matters at the time of the proceedings, called on the applicant to submit missing documents, since, in his view, the applicant had not provided any justification for his request of name change. In his statement, the applicant reiterated the points made in the original application. By Decision No. N-433-826/4/2014 of 3 April 2014 (hereinafter: "administrative decision"), the Minister for Administration and Justice rejected the applicant's request for a change of name, both for the surname and for the given name. The Minister based his reasoning on the fact that section 27/A (2) of the LDCR did not allow the applicant's name to be changed in accordance with the Hungarian spelling rules.

[4] The applicant sought the judicial review of the administrative decision on the basis of the grounds set out in its initial application and requested that the provisions of the CCDec be taken into account.

[5] According to the motioning judge, the contested statutory provisions infringe Article I (1) to (3), Article II, Article VI (1) to (2) and Article XV (1) to (2) of the Fundamental Law. The motioning judge also sought a declaration of the violation of an international treaty on the basis of Article Q (2) of the Fundamental Law and section 8 of the Act XXXI of 1993 on proclaiming the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and its eight protocols (hereinafter: "ECHR").

[6] According to the motioning judge, the challenged provisions of the law restrict the right to bear a name. In the light of what is stated in the CCDec: the spelling of the old Hungarian double surname is part of his right to human dignity and self-identity and therefore it enjoys protection as a fundamental right. The double surname registered with a hyphen as a result of the law-maker's decision creates a new surname. The prohibition on the registration of a surname in the old traditional spelling (without a hyphen) cannot be regarded as a restriction for which there is a reasonable constitutional justification. The public interest in the uniformity of public registers and the need to distinguish surnames from given names does not justify the registration of a double surname only with a hyphen. Nor is that rule suitable for expressing the family relationship between the applicant and his family. The extent of the restriction is therefore disproportionate to the aim pursued, causing disproportionate harm to the interests of the applicant and is also discriminatory. In certain cases, the law-maker has allowed for the possibility of approval based on equity, for example in the case of names not formed in accordance with the rules of the Hungarian language, historical names, family names written in the old style. However, the possibility of writing the two-part surname without hyphens was not and is not allowed even on the basis of equity (as it is not allowed for surnames with more than two parts) under section 28 (6) of the LDCR and section 49 (5) of the ACRP.

[7] As regards the violation of international treaties by the contested provisions, the motioning judge referred to the case of Daróczy v. Hungary [ECHR (44378/05), 1 July 2008]. The judge pointed out that, according to the case-law of the European Court of Human Rights, although States enjoy a wide margin of appreciation in regulating names, they cannot ignore their importance in the lives of individuals, since names are a central element of self-identification and self-determination. It is a violation of Article 8 ECHR for the State to restrict without a justified and relevant reason an individual's right to use or change his or her name.

II

[8] 1. The provisions of the Fundamental Law referred to by the petitioner:

“Article Q (1) In order to establish and maintain peace and security and to achieve the sustainable development of humanity, Hungary shall strive to cooperate with all the peoples and countries of the world.

(2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law be in conformity with international law.

(3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by publication in rules of law."

“Article I (1) The inviolable and inalienable fundamental rights of MAN must be respected. It shall be the primary obligation of the State to protect these rights.

(2) Hungary shall recognise the fundamental individual and collective rights of man.

(3) The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right.”

"Article II Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.”

"Article VI (1) Everyone shall have the right to have his or her private and family life, home, communications and good reputation respected.

(2) Everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest.”

"Article XV (1) Everyone shall be equal before the law. Every human being shall have legal capacity.

(2) Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status."

[9] 2 The provision of the LDCR challenged by the petition:

"Section 27/A (2) The surname is a one- or two-part name. The parts of a two-part surname are connected by a hyphen."

"Section 30 (3) The registrar shall register the two-part birth surname and the part of the marriage name formed by the surnames, joined by a hyphen."

[10] 3 The provision of the ACRP challenged by the petition:

"Section 44/A (2) The surname is a one- or two-part name. The parts of a two-part surname are connected by a hyphen."

III

[11] The motion is in part well-founded, for the reasons set out hereunder.

[12] 1. First of all, the Constitutional Court examined whether the judicial initiative complies with the criteria set forth by the law. [14] Pursuant to section 25 of the ACC, on the basis of Article 24 (2) (b) of the Fundamental Law, a judge may – in addition to suspending court proceedings – initiate with the Constitutional Court to declare a law or the provision of a law to be contrary to the Fundamental Law or to exclude the application of a law being contrary to the Fundamental Law, if in the course of the adjudication of an individual case pending before the judge, a law has to be applied which he or she finds to be contrary to the Fundamental Law or about which the Constitutional Court has already found to be contrary to the Fundamental Law.

[13] The subject-matter of the case underlying the Constitutional Court proceedings is an administrative decision, the judicial review of which is governed by Chapter XX of the Act III of 1952 on the Civil Procedure (hereinafter: ACP). Pursuant to section 339/A of the ACP, the court shall review the administrative decision on the basis of the law applicable at the time of its adoption and the facts of the case. The administrative decision was adopted on 3 April 2014, and the court must therefore apply the law in force at that date. This also determines the law that can be challenged in the judicial initiative.

[14] The judge in the case identified two pieces of legislation in the judicial initiative: the LDCR and the ACRP. The ACRP was promulgated on 8 January 2010. Pursuant to

section 97 of the ACRP, which was in force at the time of its promulgation, the Act entered into force on 1 January 2011, and section 100 (1) (a) also provided for the repeal of the LDCR.

[15] However, the law-maker subsequently amended the date of entry into force of the ACRP on several occasions. First, sections 257 to 258 of the Act CXLVIII of 2010 on the necessary legislative amendments in connection with the Act XLII of 2010 on the List of Ministries of the Republic of Hungary and the amendment of certain Acts on industrial property protection provided for the postponement of the entry into force of the ACRP. This Act entered into force on 31 December 2010 and provided for the entry into force of the ACRP on 1 January 2012 instead of 1 January 2011.

[16] Subsequently, sections 351 to 353 of the Act CCI of 2011 amending certain acts in connection with the Fundamental Law provided for a new deadline for the entry into force of the ACRP. This Act entered into force on 31 December 2011 and provided that the ACRP would enter into force on 1 January 2013 instead of 1 January 2012.

[17] Then, a provision establishing the new entry into force took effect on 31 December 2012: section 84 of the Act CCVII of 2012 amending certain Acts in connection with the Magyary Simplification Programme and spatial development amended the deadline for the entry into force of the ACRP. Accordingly, the ACRP would enter into force on 1 January 2014 instead of 1 January 2013.

[18] Finally, section 117, section 119 (3) and section 120 of the Act LXXVI of 2013 – promulgated in June 2013 – on the necessary amendments to certain Acts in connection with the establishment of the electronic civil register provided for the new deadline for the entry into force of the ACRP and the transitional arrangements required in this context. According to this Act, the ACRP would enter into force on 1 July 2014 and the LDCR would be repealed at the same time.

[19] On the basis of the above, it can be concluded that the LDCR was in force at the time when the administrative decision subject to the judicial review was adopted, i.e. on 3 April 2014, and the Constitutional Court assessed the judicial initiative in this light.

[20] Pursuant to section 41 (3) of the ACC, the Constitutional Court may establish a repealed law to be contrary to the Fundamental Law if the legislation should still be applicable in the specific case. This condition is fulfilled in the case at hand, since the judge of the Budapest-Capital Administrative and Labour Court in the case pending under No. 9.K.32.048/2014/13 applied the provision of the LDCR that is no longer in force – which, according to the motioning judge, is in conflict with the Fundamental Law. Therefore, the Constitutional Court continued its proceedings with regard to the challenged provision of the LDCR which is no longer in force.

[21] In addition, the Constitutional Court notes that in most cases, the amendment of the deadline for entry into force was made one day before the foreseen entry into force of the ACRP according to the previous statutory provision. In other words, in three cases, the law-maker "postponed" the entry into force of the ACRP by one day before the entry into force. However, in the absence of a relevant petition, the Constitutional Court did not examine the constitutionality of this.

[22] 2 The Constitutional Court has previously addressed certain aspects of the right to a name in several decisions.

[23] Following the entry into force of the Fourth Amendment to the Fundamental Law of Hungary (25 March 2013), the Constitutional Court ruled, with regard to clause 5 of the Final and Miscellaneous Provisions of the Fundamental Law, that "in the course of reviewing the constitutional questions to be examined in the new cases, the Constitutional Court may use the arguments, legal principles and constitutional relationships elaborated in its previous decisions if the application of such findings is not excluded on the basis of the identical contents of the relevant section of the Fundamental Law and of the Constitution, the contextual identification with the whole of the Fundamental Law, the rules of interpretation of the Fundamental Law and by taking into account the concrete case, and it is considered necessary to incorporate such findings into the reasoning of the decision to be passed" {Decision 13/2013. (VI.17.) AB, Reasoning [32]}. In this context, the Constitutional Court provided an overview of its former case law related to the relevant scope of questions and in connection with the particular case it compared the underlying provisions of the Constitution and of the Fundamental Law to find that there was no obstacle of applying as appropriate the formerly developed relevant case law."

[24] 2.1 The CCDec dealt comprehensively with the right to name as well as the right to bear a name and the right to change one's name as parts of the foregoing. As stated in the CCDec, the right to have a name, as a right to have a denomination that serves the purpose of representing one's identity, is a fundamental right of absolute structure, i.e. it shall not be restricted by the State. According to the CCDec: "the right to one's own name is conceptually identical only with the totality of the right, that is, it is in itself an »essential content« and as such, it cannot be restricted, i.e. it is an inalienable, inviolable right over which the State may not exercise any authority.

Everyone shall have his or her 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 may not be substituted for. [...] 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." (CCDec 2001, 527, 542)

[25] In addition to the function of the name as an expression of the individuality of the person, the CCDec emphasized its socio-historical-cultural binding. Accordingly, name is tradition-bound in both form and content. Formally, in so far as the name is composed of a combination of surname and given name, not just one or the other. In a substantive sense, because the surname can be a family name borne by ancestors, and thus surname is intended to express membership of a particular family. The scope of surnames is defined by tradition and linguistics. These constraints are as much a limitation on the State's regulation of the registration of names as they are on the exercise by citizens of the sub-rights of the right to a name.

[26] Just as the right to a name is, in the sense of "the individual's right to his or her own name", an absolute right, i.e. an unrestrictable fundamental right linked to human dignity, the same does not apply to the individual sub-rights of the right to a name. Among these, the right to bear a name, to change one's name and to modify one's name are mentioned in the CCDec (with a reference to not considering this list an exhaustive one). Regarding these sub-rights, the CCDec considers that the fundamental rights test of necessity-proportionality applies to the restriction. "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 family names as over forenames. 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." (ABH 2001, 527, 549 to 550)

[27] On the basis of the above, the CCDec annulled, among others, the provision [section 48 (3)] of the implementing decree of the LDCR [Regulation No. 2/1982 (VIII. 14.) MT-TH of 14 June 1982 on civil registers, marriage procedure and bearing names (hereinafter: LDCR-ID)], which provided regarding the registration of a distinguishing

letter sign that is shall be entered in the registry in capital letters before the surname and separated from the surname by a period. According to the CCDec, in addition to being contrary to higher-level legislation, that provision was unconstitutional because it infringed the family name protected as a fundamental right. As a result of the annulment of the legislative provision, "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 LDCR and the LDCR-ID 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." (CCDec 2001, 527, 553)

[28] 2.2 Following the CCDec, Decision 1231/E/2007 AB (ABH 2009, 2249) dealt with the right of persons with dual citizenship to change their names. The petitioner sought a declaration of a violation of the Constitution by omission on the grounds that the law-maker had not regulated the right to change the name of dual citizens. As a Canadian-Hungarian dual citizen, the petitioner took the pre-name "von" under Canadian law after acquiring Canadian citizenship. This change of name was registered under Hungarian law with a hyphen as a two-part surname, pursuant to section 27 (2) of the LDCR in force at the time. The Constitutional Court held that there was no violation of the Constitution by omission for the reason invoked by the petitioner, since the Hungarian authorities must act on the basis of Hungarian legislation – i.e. the LDCR – in the case of a name change if the personal law of the person concerned is Hungarian. In the case of dual citizens, if one of the citizenships is Hungarian, Hungarian rules apply in the case of a name change. Therefore, if the surname of the person concerned is a double surname, it must be registered with a hyphen. Finally, the decision referred to the possibility of exercising the right to equitable relief in the event of a change of name, but this does not apply to the prefix "von", and Hungarian law also excludes the use of noble titles. Thus, the name can only be registered with a hyphen.

[29] 2.3 The Decision 988/B/2009 AB (ABH 2011, 2037) dealt with the issue of bearing (birth registration) of noble titles and, in the light of the CCDec, held that the right to bear one's own name does not include the right to bear a noble pre-name name and title. The right to bear one's own name protects one's own name, consisting of a surname and a given name, which does not include the noble name and title, which are therefore not protected as fundamental rights (in absolute form). The other reason for not extending the protection to the noble name and title is because they were associated with additional rights that would violate equal human dignity. In view of this, the Constitutional Court did not consider the law-maker's exclusion of the registration of noble names and titles to be unconstitutional.

[30] 3. The Constitutional Court went on to provide an overview of the development of the current Hungarian legislation on dual surnames.

[31] State registration of births and deaths in Hungary was first ordered by the Act XXXIII of 1894 on State Civil Registry. From then on, registrations were made in chronological order in three separate registers (birth, marriage and death registers). As regards the birth name, the registrar had to enter the child's given name and the surname and given name of the parents (in the case of illegitimate children, the mother’s given name and surname), i.e. the birth register did not initially contain the child's surname. This was the rule until 1 January 1953.

[32] Instead of the minutes-pattern of birth registration, registration by box (“box-pattern”) began from 1 January 1907. (The legal basis for this was created by the Act No. 1904:XXXVI. amending the Act No. 1894:XXXIII. on State Civil Registry, and the Decree No. 118339/1906 of the Ministry of Interior, which ordered its entry into force, and by paragraph 4 of Circular No. 118340/1906 of the Ministry of Interior on measures relating to the entry into force of the Act No. 1904:XXXVI. The decrees were published in the Official Gazette of the Interior No 48 of 1906 and its annex.) In practice, however, this meant that the parent's surname and given name were entered in the register in the same box, which could give rise to problems of interpretation in the case of some surnames and given names with two or more parts.

[33] A comprehensive reform of the civil registry took place in 1952. Then four new norms concerning the civil registry were adopted: the Act IV of 1952 on Marriage, Family and Guardianship, Law-Decree 23 of 1952 on its entry into force and implementation, the Law-Decree 19 of 1952 on civil registers, and finally the Instruction 9/1952 of the Ministry of Interior on the keeping of civil registers and the marriage procedure (hereinafter: “Instruction”). The detailed rules on the keeping of civil registers and the civil registration procedure were laid down in the Instruction. Accordingly, as from 1 January 1953, the surname and the given name had to be entered in a separate box, and the birth certificate issued on the basis of the civil register follows the same

format (see Example 12, Specimen 2 in Annex to the Instruction). However, at the same time, section 39 (6) of the Instruction provided that a two-part surname, regardless of how it was traditionally written by the family, shall be registered with a hyphen. The rationale for this provision was, in principle, that it would make it possible to distinguish clearly between the surname and the given name. (It should be noted that the Instruction also regulated that the surname could have no more than two parts and that no distinctive letter sign could be registered any longer.)

[34] The consequence of this rule was that the law-maker created different surnames within the same family (supposedly) on registration grounds.

[35] Subsequent legislation on the registration of birth names, specifically the two-part surname, took over the provisions of the Instruction, irrespective of the fact that the separation of the surname and the given name was already resolved by registration in different boxes when the Instruction ordered the registration of two-part surnames with hyphens. The current ACRP also regulates the registration of two-part surnames in the same way – both for birth and married names.

[36] 4. The Constitutional Court continued with providing an overview of the legal provisions applicable in the case. In this respect, the relevant date is the date of adopting the administrative decision, i.e. 3 April 2014.

[37] Section 27 (2) of the LDCR, as amended by the Act XLV of 2002 amending the LDCR, provided that the rules of Hungarian spelling shall prevail in the registration of names. This rule was applied in all types of name procedures under the LDCR The rules on birth names were regulated in section 27/A of the LDCR at the time of adopting the administrative decision. The rules on changing birth names were regulated in sections 28 to 28/B of the LDCR at the time of adopting the administrative decision. Section 28 (6) of the LDCR allowed the authority to authorise the taking up of names pronounced differently from Hungarian traditional pronunciation, names not formed in accordance with the rules of the Hungarian language, historical names, surnames written in an old style in the context of the name change procedure in cases deserving special consideration.

[38] In addition, sections 30 to 30/B of the LDCR, in force at the same time, contained provisions on the registration of names. Among the latter legislative provisions, in relation to the present case, section 30 (3) of the LDCR is significant, according to which the registrar must register the two-part family name and, in the case of a married name, the (two-part) element of the family name with a hyphen.

[39] Based on all this, it can be established that in its regulatory system of the LDCR, the rules of Hungarian spelling were the main rule for the registration of the birth name and in the case of its change. An exception to this was created by the second sentence

of section 27/A (2) of the LDCR, regulating that, contrary to the traditional spelling of multi-part family names, these names shall be mandatorily registered with a hyphen, and, in the event of a name change, section 28 (6) of the LDCR, which allowed the deviation from the rules of Hungarian spelling for reasons deserving of special consideration.

[40] Two-part family names could only be registered with a hyphen, regardless of whether it was a matter of registering a birth name or changing it. This follows from the second sentence of section 27/A (2) as well as from section 30 (3) of the LDCR. In other words, a two-part family name could not be registered without a hyphen by means of a name change, even in a case deserving special consideration, as this was clearly excluded by section 30 (3) of the LDCR. In other words, the rules concerning the hyphenated registration of the two-part surnames were set out in the LDCR as mandatory rules which did not allow for exceptions even on the basis of equity, and were applicable regardless of the fact that according to the rules of Hungarian spelling the given surname would have to be written without a hyphen (see the so-called indicative surnames).

[41] 5 The Constitutional Court continued with examining whether the second sentence of section 27/A (2) of the LDCR infringes the right to bear and change one's name, in the light of the CCDec.

[42] On the basis of the arguments set out in the CCDec, the Constitutional Court reiterates that, in regulating the rules governing the right to bear and change names, the State's primary task is registration. With account to public interest, the law-maker has greater leeway in establishing the rules for changing surnames: it is therefore not unconstitutional for an individual not to have unlimited control over his or her surname (in particular as regards the number and frequency of name changes).

[43] However, the case is different where the surname of the person concerned differs from the surname borne by his ancestors as a result of a decision of the law-maker. In that regard, the CCDec annulled the rule concerning the registration of a distinctive letter sign, according to which it could be registered only as a letter sign preceding the surname, even if it could be proved that the ancestors in the family did not use the distinctive letter sign before the surname. In so doing, the law-maker itself creates a surname for the individual which is different from, or alien to, that of his family.

[44] The same can be said of the hyphenation of two-part surnames. In this case, too, the law-maker has created a situation in which a surname which was used in the family by the ancestors without a hyphen had to be registered with a hyphen. In the present case, the application for name change is precisely intended to enable the person concerned to “reclaim” the surname used by his ancestors, which had been distorted by the law-maker's decision.

[45] The restrictive provision contained in section 27/A (2) of the LDCR, according to which a two-part family name may be registered only with a hyphen, is also a rule restricting the right to a name with regard to the right to bear and change the name. This restriction is considered constitutional only if it is necessary and proportionate. The compulsory and non-exceptional linking of the double surname with a hyphen cannot be justified by the clarity of registration, because since 1 January 1953 the registration of the surname and the given name in the register has been technically separate, so that they cannot be confused. Nor can it be justified by the public interest that a double surname, traditionally written by the ancestors of the family without a hyphen, can be registered only with a hyphen, as the law-maker has decided, and that this cannot be changed even by changing the name (even in the context of special equitable relief). Thus, there is no constitutionally acceptable purpose for which this restriction could be considered necessary.

[46] On the basis of the above, the Constitutional Court held that the second sentence of section 27/A (2) of the LDCR was contrary to Article II of the Fundamental Law.

[47] Considering that the Constitutional Court found the unconstitutionality of the challenged provision on the basis of its conflict with Article II of the Fundamental Law, it did not conduct a constitutionality review in relation to the other aspects raised in the petition, in accordance with its case-law.

[48] 6. The Constitutional Court took into account that, in addition to the challenged provision of the law, the rules on the registration of names (section 30 of the LDCR) would constitute an obstacle to the registration of a change of name in the civil register. The Constitutional Court held that, in order to establish the legal effect of establishing the violation of the Fundamental Law, it was also necessary to examine the constitutionality of section 30 (3) of the LDCR on the basis of a close connection, having regard to Article 24 (4) of the Fundamental Law. In this respect, the Constitutional Court found that the wording "the two-part birth surname and" in section 30 (3) of the LDCR also violated Article II of the Fundamental Law for the reasons explained above and was therefore contrary to the Fundamental Law.

[49] 7. As provided in section 45 (2) of the ACC: "if the Constitutional Court annuls, on the basis of a judicial initiative or a constitutional complaint, a law applied in a concrete case, the annulled law shall not be applied in the case that had led to the proceedings of the Constitutional Court." Accordingly, the Constitutional Court found that the second sentence of section 27/A (2) of the LDCR and the wording "the two-part birth surname and" in section 30 (3) of the LDCR are not applicable in the case No. 9.K.32.048/2014/13 pending before the Budapest-Capital Administrative and Labour Court.

[50] 8. The Constitutional Court establishes the following with regard to the second sentence of section 44 (2) of the ACRP.

[51] Pursuant to section 339/A of the ACP, the court shall review the administrative decision on the basis of the law applicable at the time of its adoption and the facts of the case. The Constitutional Court found that in the present case the LDCR was applicable at the time when the administrative decision was taken, i.e. on 3 April 2014, and therefore the Constitutional Court may conduct the constitutionality review regarding the LDCR which has in the meantime been repealed. Therefore, the Constitutional Court refused the judicial initiative to finding the second sentence of section 44 (2) of the ACRP being in conflict with the Fundamental Law and to annul it on the basis of section 64 (d) of the ACC and section 65 (1) of the Rules of Procedure.

[52] However, the Constitutional Court observes the following. Although the rules of the ACRP on the registration of names differ in part from the rules of the LDCR, the content of the rules of the ACRP on the registration of birth names and on the change of the name in the case of the registration of a two-part family name with a hyphen is identical to the relevant provisions of the LDCR (with the difference that the ACRP does not provide that the registration of names is governed by the rules of Hungarian spelling).

[53] In the course of its proceedings, the Constitutional Court noted that on 27 April 2015, the Minister of the Interior submitted a bill, which was promulgated on 8 July 2015 [Act I of 2010 on the Birth Registration Procedure and Act CXI of 2015 amending certain Acts related to public employment]. This law, among other things, abolishes the obligation to register the two-part surname with a hyphen in the case of birth names. In addition, the Act allows, through a simplified procedure known as name correction, that those whose two-part surname was registered with a hyphen as a result of the Instruction that entered into force on 1 January 1953, despite the fact that their ancestors used it without a hyphen, may apply for a new registration of their surname in this form.

[54] 9. The publication of this decision of the Constitutional Court in the Hungarian Official Gazette is based on section 44 (1) of the ACC.

Budapest, 14 July 2015.

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President of the Constitutional Court

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Justice of the Constitutional Court

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