JUDGMENT NO. 131 YEAR 2022

In this case, the Court heard a challenge to a provision that did not allow parents, despite their agreement, to give only the mother's surname to their child. The Court held that the provision was unconstitutional not only because it failed to allow for this agreement, as the underlying Court argued, but because it rested on a system standard that required giving the father's surname as representative of the union of the two parents, with recently added exceptions for adding the mother's surname. In the absence of legislative action, despite pressure coming from international obligations as well as the Constitutional Court, which had, in the past, held that the automatic assignment of the father's surname to children was a vestige of an outdated family law structure and incompatible with the constitutional principle of equality, the Court struck down the provision. As a matter of consequence, it also struck down the other provisions that relied upon the rule automatically giving the father's surname to children. The new rule introduced by the Court requires the assignment of both parents' surnames to children simultaneously acknowledged by them (or born to a married couple or adopted by a couple), in the order agreed upon by them, except where they agree to give only one of their surnames.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 237, 262, and 299 of the Civil Code, Article 72(1) of Royal Decree No. 1238 of 9 July 1939 (Rules Governing Marital Status), and Articles 33 and 34 of Presidential Decree No. 396 of 3 November 2000 (Provisions Reforming and Simplifying the Rules on Marital Status, Pursuant to Article 2(12) of Law No. 127 of 15 May 1997). The questions as to constitutionality were referred by the Second Civil Division of the Ordinary Court of Bolzano with a Referral Order of 17 October 2019, the Constitutional Court with an Order of 11 February 2021, and the Court of Appeal of Potenza, with a Referral Order of 12 November 2021, and are registered, respectively, as No. 78 of the 2020 Register of Referral Orders and Nos. 25 and 222 of the 2021 Register of Referral Orders, and published in the *Official Journal* of the Republic No. 28, first special series of 2020, No. 9, first special series of 2021, and No. 4, first special series of 2022.

[omitted]

Conclusions on Points of Law

1.– With a referral order filed on 17 October 2019 and registered as No. 78 of the 2020 Register of Referral Orders, the Second Civil Division of the Ordinary Court of Bolzano raised questions as to the constitutionality of Article 262(1) of the Civil Code, in that it fails to allow parents, at the time of contemporaneously acknowledging their child (paragraph 1 sentence 2), and in spite of their mutual agreement, to give the child the mother's surname only.

It is the referring court's view that the challenged provision is in breach of Articles 2, 3, 11, and 117(1) of the Constitution, the last in relation to Articles 8 and 14 of the European Convention on Human Rights (ECHR), signed in Rome on 4 November 1950, ratified and executed with Law No. 848 of 4 August 1955, and to Articles 7 and 21 of the Charter of Fundamental Rights of the European Union, declared in Nice on 7 December

2000 and adopted in Strasbourg on 12 December 2007.

2.– In the course of the aforementioned proceedings, this Court issued Order No. 18 of 2021, registered as No. 25 of the 2021 Register of Referral Orders, referring to itself questions as to the constitutionality of Article 262(1) of the Civil Code, to the extent that that it requires that, where a child is acknowledged contemporaneously by both parents (paragraph 2, sentence 1), and in the absence of an agreement by the parents to the contrary, the paternal surname shall be assigned to the child, as opposed to both parents' surnames, alleging that this amounted to a breach of Articles 2, 3, and 117(1) of the Constitution, the last in relation to Articles 8 and 14 ECHR.

3.– With a referral order filed on 12 November 2021 and registered as No. 222 of the 2021 Register of Referral Orders, the Court of Appeal of Potenza raised questions as to the constitutionality of Articles 237, 262, and 299 of the Civil Code, of Articles 72(1) of Royal Decree No. 1238 of 9 July 1939 (Rules Governing Marital Status), and Articles 33 and 34 of Presidential Decree No. 396 of 3 November 2000 (Provisions Reforming and Simplifying the Rules on Marital Status, Pursuant to Article 2(12) of Law No. 127 of 15 May 1997), to the extent that they fail to allow married couples to give their child the mother's surname only at the time of birth, despite their mutual agreement, in reference to Articles 2, 3, 29(2) and 117(1) of the Constitution, the last in reference to Articles 8 and 14 ECHR.

[omitted]

5.– As a procedural matter, this Court holds that the questions as to constitutionality raised by the Court of Appeal of Potenza, with Referral Order No. 222 of 2021, are inadmissible.

The referring Court makes a bare assertion that the questions raised are not manifestly lacking in foundation, simply listing the constitutional provisions it considers to have been breached and providing cursory, patchy references to pieces of constitutional and international case law. This Court has consistently held that "the lack of a sufficient and autonomous articulation of the reasons why the challenged provision allegedly violates the cited constitutional provision (see, among many, Judgments Nos. 54 of 2020, 33 of 2019, and 240 of 2017)" (Judgment No. 30 of 2021) makes the questions raised inadmissible.

6.– The questions as to the constitutionality of Articles 262(1), second sentence, of the Civil Code, raised by the Court of Bolzano with Referral Order No. 78 of the 2020 Register of Referral Orders, and self-referred by this Court, with R.O. No. 25 of 2021, are well founded.

7.– As a preliminary matter, this Court must recall the features of the challenged provisions, the legislative basis underlying them, and the related rulings of this Court, which has heard arguments concerning its constitutionality many times in the past.

7.1.– Article 262(1), sentence 2, of the Civil Code deals with the assignment of a surname to children born outside of marriage. It provides that: "If a child is acknowledged contemporaneously by both parents, the child shall be given the father's surname."

The provision reflects the rules for giving surnames to children born to married couples, since the legislative origins of the rule can be found in the institution of marriage. In fact, the roots of the rule may be found in the text of Article 144 of the Civil Code that predated the reform of 1975 (Law No. 151 of 19 May 1975, "Reform of Family Law"). This provision, using words identical to those in Article 131 of the 1865 Civil Code of the Kingdom of Italy, stated that: "[T]he husband is the head of the family; the wife shall share his civil position and take his surname, and she shall be obliged to accompany him

to whatever place he considers best to establish residency."

In this context, the husband's surname, which was imposed on his wife, was that of the whole family, and this made it unnecessary to specify that it would also be transmitted to children born into the marriage.

The family law reform of 1975 revised Article 144 of the Civil Code and introduced Article 143-*bis*, which provided that the husband's surname would be added to that of the wife, and would no longer replace it. This provision has been interpreted unequivocally to mean that wives may use their husbands' surname, and not that they are obliged to do so. The new rule, while continuing to reflect something of the old authority of husbands, blurred the once clear image of the husband's surname being that of the whole family. At the same time, however, the rule attributing the father's surname to any children was left unaltered in a number of provisions (point 14.1.), including the one at issue. This rule remained untouched even by the filiation reform, introduced by Law No. 219 of 10 December 2012 (Provisions on the Acknowledgment of Biological Children) and by Legislative Decree No. 154 of 28 December 2013 (Modification of the Provisions on Filiation, Pursuant to Article 2 of Law No. 219 of 10 December 2012).

7.2.– This Court, over the course of more than thirty years, has been asked many times to rule on the constitutionality of the provision at issue in this case.

In 1988, referring to the surnames of children born to married couples, the Court held that, "it is possible, and probably consonant with the evolution of public opinion, to substitute the existing rule for assigning the name that distinguishes the members of a family derived from a marriage with a different one that shows greater respect for spousal autonomy, which would reconcile the two principles enshrined in Article 29 of the Constitution, rather than limiting one as a function of the other" (Order No. 176 of 1988).

Eighteen years later, this Court reiterated that, "the current system of assigning surnames is a holdover from a patriarchal idea of the family, the roots of which lie in Roman family law, and from an outdated idea of husbands' authority, which is no longer consistent with the principles of the system and with the constitutional principle of the equality of men and women" (Judgment No. 61 of 2006, quoted in Order No. 145 of 2007).

Finally, nearly another decade later, this Court considered that, "after many years [since the aforementioned] rulings, a 'different rule more respectful of the equality between men and women' [had] not yet been introduced" (Judgment No. 286 of 2016). Therefore, this Court, "in anticipation of the urgent legislative action needed to regulate this area in an organic way, in accordance with criteria that shall finally be in accordance with the principle of equality," heard arguments on the question raised as to constitutionality, strictly within the limits imposed by the referral. This Court then declared the rule unconstitutional to the extent that it failed to allow "married couples, by mutual agreement, to give the mother's surname to their child at the time of birth." It also extended the effects of the ruling, as a matter of consequence, both to the provision challenged today (Article 262(1), sentence 2 of the Civil Code) and to the provision governing the assignment of surnames to adopted adults (Article 299(3) of the Civil Code).

8.– This Court is once again asked to review the constitutionality of the rule, now transposed into Article 262(1), sentence 2, of the Civil Code, on two grounds.

With R.O. 78 of 2020, the Court of Bolzano alleges that it is unconstitutional to the extent that it fails to allow parents, by mutual agreement, to give only the mother's surname to their child. The referring Court requests an additive ruling, the contents of

which would create a radical exception to the general rule under which children are automatically given their father's surname.

With R.O. No. 25 of 2021, this Court, acting as referring court, makes an interlocutory request for a substitutive ruling, to replace the part of the rule specifying that children shall be given only the father's surname at birth, as opposed to the surnames of both parents, unless the parents agree otherwise.

The overlapping challenges are based on the following constitutional provisions: Article 2 of the Constitution, in relation to protecting the child's identity, and Article 3 of the Constitution, in relation to the principle of equality in the relationship between the parents.

Similarly, the breach of international obligations pursuant to Article 117(1) of the Constitution has to do with protecting the personal identity of the child, found in Article 8 ECHR and on the prohibition of discrimination pursuant to Article 14 ECHR, in light of the case law of the European Court of Human Rights [ECtHR].

9.– Here it bears emphasizing that children's right to a personal identity, and the equality between the parents intersect in the area of selecting surnames.

A person's surname, together with their first name, forms the core of their legal and social identity: it is how they are identified for both public and private law purposes, and it becomes the abbreviated representation of the individual personality, the meaning of which grows and is enriched over time.

This Court has consistently held that a name is the "autonomous, distinctive sign of […] personal identity" (Judgment No. 297 of 1996) as well as an "'essential feature of the […] personality' (Judgment No. 268 of 2022; see also Judgment No. 120 of 2001)" (Judgment No. 286 of 2016). It is "recognized by Article 2 of the Constitution as a 'good that forms the object of an autonomous right' [and, therefore, as a] 'fundamental right of the human person' (Judgments Nos. 13 of 1994, 297 of 1996, and, finally, 120 of 2001)" (Judgment No. 268 of 2002).

The challenged provision deals with the assignment of a surname, which, as a rule, happens at the same time that they gain official status as the child of their parents.

It follows that a surname, as the fulcrum of one's legal and social identity (together with the first name), links the individual to the social structure, which receives them through their filial status. The surname must, therefore, be rooted in the family identity and, at the same time, reflect the function it performs with respect to the individual, including with respect to their future (Judgment No. 286 of 2016).

Therefore, the way in which a surname professes a child's family identity must reflect and show respect for the parity and equal dignity of the parents.

10.– In the scenario envisaged by Article 262(1), sentence 2, of the Civil Code, the family identity of the child, which preexists the assignment of a surname, can be broken down into three elements: the parental bond with the father, identified by a surname that represents his branch of the family; the parental bond with the mother, who is also identified by a surname, representing her branch of the family; and the parents' choice to contemporaneously acknowledge their child, thus receiving the child into a family unit.

10.1.– Choosing to select only the paternal family line from among the factors that preexist the assignment of a surname unilaterally obscures the parental bond with the mother.

In the act of contemporaneously acknowledging their child, the sign of the union between the two parents causes the woman to become invisible.

The automatic nature of the requirement bears the seal of inequality among the

parents, which is then passed on and imprinted upon the identity of the child, in breach of Articles 2 and 3 of the Constitution.

This Court has long held (*supra* point 7.2) that the rule attributing paternal surnames to children is a "holdover of a patriarchal idea of the family" (Judgments Nos. 286 of 2016 and 61 and 2006). It is the echo of a disparity of treatment that came about in the context of the family founded on marriage and was even projected upon the assignment of surnames to children born outside of marriage, when such children were contemporaneously acknowledged by their parents.

There is no justification for this automatic way of assigning surnames, in Article 3 of the Constitution, which provides the basis for the relationship between parents, who are united in pursuing the interests of their child. Nor can one be found in the intersection between the principle of equality and the "purpose of safeguarding the unity of the family, pursuant to Article 29(2) of the Constitution," as this Court has said about giving surnames to children born to married couples (Judgment No. 286 of 2016). In fact, "it is equality itself which guarantees this unity, and vice versa, while inequality is what puts it at risk." Therefore, unity "is strengthened to the degree to which the reciprocal relationships between the spouses are governed by solidarity and parity" (Judgment No. 133 of 1970)" (Judgment No. 286 of 2016).

The family law reform of 1975, while it did not alter the rules on surnames, nevertheless helped clarify the relationship between equality and family unity. The unity of the family founded on marriage is based on the spouses having "the same rights and the same duties" (Article 143 of the Civil Code), on reciprocal solidarity, and on sharing choices (among the many relevant provisions, see the updated version of Article 144 of the Civil Code). In the same way, parents' assumption of responsibility, within or outside of marriage, is rooted in the equality between them and their agreement on decisions concerning their child. This was stressed by both the1975 reform and the 2012-2013 filiation reform. That reform, too, was silent on the provision at issue here, but it did bring about the removal of another vestige of the historical inequality between parents, i.e. the original fourth paragraph of Article 316 of the Civil Code (under which only fathers could take "urgent and non-deferrable measures" in order to shield their child from "impending danger with a risk of serious prejudice to the child").

Unity and equality cannot coexist if one cancels out the other, if unity acts as a limitation that gives a veneer of seeming legitimacy to sacrifices that flow in only one direction.

Given the evolution of the system, the remnant of a discriminatory worldview, which has a ripple effect on every person's identity through their surname, may no longer be tolerated.

10.2.– The ECtHR has underscored the "importance of an evolution in the meaning of equality of the sexes," calling for the "elimination of all discrimination […] in the choice of a surname," on the premise that, "the tradition of manifesting family unity by attributing the husband's surname to all the members of the family [can] not justify discrimination against women (see, in particular, *Ünal Tekeli*, [paragraphs] 64-65)" (ECtHR Judgment of 7 January 2014, *Cusan and Fazzo v. Italy*, paragraph 66).

In fact, Italy's international obligations have, since the late 1970s, called for the "elimination of all forms of discrimination toward women" "in all matters having to do with marriage and family relationships […], including the choice of surname" (Judgment No. 61 of 2006, in reference to Articles 16(1)(*g*) of the Convention on the Elimination of All Forms of Discrimination Against Women, adopted in New York on 18 December

1979 and ratified and executed in Italy with Law No. 132 of 14 March 1985, as well as to Council of Europe Recommendations Nos. 1271 of 1995 and 1362 of 1998, and to the earlier Resolution No. 37 of 1978).

11.– This Court must now evaluate the terms of the questions as to constitutionality as they are presented in its interlocutory self-referral Order, compared with the questions raised by the Court of Bolzano in R.O. 78 of 2020.

11.1.– As mentioned above (at point 8), the latter referral order alleges that the challenged provision is unconstitutional to the extent that it fails to allow the parents, by mutual agreement, to give only the mother's surname to their child. But the cornerstone of the argument – that is, that an exception is created by mutual agreement between the parents – presupposes that there is respect for the principle of equality.

A system that requires children to be given their fathers' surnames is asymmetrical toward the mother. This is antithetical to parity and undermines the possibility of agreement *a priori*. Agreement is rendered all the more unlikely by the fact that the scenario at issue involves giving only the mother's surname, and amounts to a radical sacrifice of what the father is entitled to under the law.

Without equality, the logical and axiological conditions necessary for agreement are absent.

Because it violates the principle of equality, the rule automatically giving paternal surnames contains an element of unconstitutionality that undermines, *ab imis*, the substance of the additive ruling the Court of Bolzano has requested in R.O. 78 of 2020.

11.2.– Consequently, this Court, considering the failure of the many legislative reforms that have been attempted from the eighth legislature on, cannot avoid giving effect to "the law of the Constitution" (self-referral Order No. 18 of 2021).

The *per se* discriminatory character of the challenged provision, the resulting effect on the identity of the child, and its tendency to make the relationship between the parents asymmetrical with respect to the surname must be replaced with a rule that is the simplest and most automatic reflection of the relevant constitutional provisions.

A child's surname must consist of the surnames of the parents, except – as laid out below (at point 12) – where they agree otherwise.

The projection of the double parental bond on the surname of the child represents their filial status: it transposes the child's relationship with their two parents onto their legal and social identity. At the same time, it is the most immediate and direct acknowledgment "of the equal importance of both parental figures" (Judgment No. 286 of 2016).

11.3.– As the rule favoring paternal surnames is unconstitutional, it becomes necessary to determine which order of the two parents' surnames is compatible with constitutional principles and with international obligations. The same discriminatory logic that lead to the present ruling of unconstitutionality cannot simply be reproduced in the form of a rule that mechanically places either the father's or the mother's surname first.

The ECtHR has explicitly addressed this issue, in reference to a Spanish provision requiring that the father's surname should precede the mother's in the event of disagreement concerning the order (Article 194 of the Rules for Applying the Law on Marital Status, in the version found in the modifications made by the Royal Decree of 11 February 2000 and remaining in force until 30 April 2021, in correlation to Article 109 of the Spanish Civil Code).

The ECtHR called this rule "*excessivement rigide et discriminatoire envers les*

femmes (*Cusan et Fazzo* [paragraph] 67)" (Judgment of 26 October 2021, *León Madrid v. Spain*, paragraph 68), and added that, "*si la sécurité juridique peut être manifestée par le choix de placer le nom du père en premier, elle peut aussi bien être manifestée par le nom de la mère* (*Burghartz c. Suisse*, 22 *février* 1994, [*paragrafo*] 28, *série* A no 280-B)" (paragraph 69).

The paradigm of parity alone, therefore, means the surnames must be given in the order agreed upon by the parents. This solution is also used in other European countries that provide for giving a double surname.

Turning now to the question of how to settle potential disagreements, in the absence of other standards, which the legislator may later choose to establish, this Court can only indicate the instrument the judicial system already provides to resolve parental disputes over important choices concerning their children, that is, the involvement of courts. Article 316(2) and (3) of the Civil Code, as well as (for couples in crisis) Articles 337-*ter*(3), 337-*quater*(3), and 337-*octies* of the Civil Code provide streamlined ways to employ this tool.

These same provisions, as interpreted by both courts and legal scholars, are used to settle disputes between parents concerning the first names of their children.

12.– Based on the considerations that have come up in light of these questions, this Court may turn now to an examination of those raised by the Court of Bolzano, with R.O. No. 78 of 2020, which were adopted by this Court in its self-referral order.

The self-referral raised questions as to the constitutionality of the rule requiring the father's surname to be given instead of the surnames of both parents, "absent an agreement to the contrary." It, therefore, referred to possible exceptions in which the surnames of both parents would not be given. And, in fact, what the Court of Bolzano has identified – that the rule is unconstitutional to the extent that it fails to allow parents to give their child the mother's surname, even when they are in agreement – also applies to fathers for identical reasons.

It is clear that, with due respect for the essential link between a child's surname and their filial status, this "agreement to the contrary" must be limited to the surnames of the two parents, embodying the parents' decision to be represented by just one of their surnames, in their relationship with their child.

On this basis, the failure to provide an exception of this kind must be held to be unconstitutional: in a context now made equal between the two, it denies the parents access to a tool for implementing the principle of equality, that is, agreement, in order to use a single surname as the identifying sign of their union, which extends to the next generation and is able to act as a medium for their child's interests.

The agreement can consider the future and the identifying role the surname will have for the child, and it can also take into account preexisting factors related to their filiation status, such as the bond with brothers and sisters who have the surname of only one of the parents. This could be the father's name, or it could be the mother's, if she acknowledged older children before the father did. It also bears acknowledging the possible scenario that the parents, in the interest of the child, agree to give the child only the surname of the parent who already has other children, prioritizing the relationship between the siblings.

Finally, the ECtHR, in *Cusan and Fazzo v. Italy*, has held that the "gap in the Italian legal system" that fails to allow for giving children the mother's surname only "where the spouses agree" amounts to a violation of Articles 8 and 14 ECHR.

13.– In conclusion, the questions as to constitutionality raised by self-referral order

R.O. 25 of 2021 and by the Court of Bolzano with R.O. 78 of 2020, are well founded.

It follows that, in order to give a child the surname of one of their parents, the parents must be in agreement, not subject to judicial decision, insofar as this entails the choice to identify both their bonds with their child with a single surname. In the event the parents do not agree on a single surname, the surnames of both parents must be given, in the order they choose.

Where the parents do not agree upon the order in which the surnames should be given, which is a requirement of the substitutive ruling, it shall be necessary to settle the dispute, and the tool for doing so under the current rules is recourse to the courts.

Therefore, Article 262(1) of the Civil Code must be declared unconstitutional in reference to Articles 2, 3, and 117(1) of the Constitution, this last provision in relation to Articles 8 and 14 ECHR, to the extent that it provides that, when parents acknowledge their simultaneously, the child shall be given the father's surname, rather than the surnames of both parents, in the whatever order they choose, except in the event that they agree, at the time of acknowledgment, to give only one of their surnames.

The additional challenges raised by the Court of Bolzano are absorbed by this ruling.

14.– As a matter of consequence, the fact that Article 262(1), sentence 2, of the Civil Code is unconstitutional renders additional provisions likewise unconstitutional, pursuant to Article 27 of Law No. 87 of 11 March 1953 (Provisions on the Constitution and Function of the Constitutional Court).

14.1.– First of all, the rules governing the assignment of surnames to children born to married couples must be declared unconstitutional.

As mentioned above (point 7.1), the rule was implied by the version of Article 144 of the Civil Code that predated the family law reform of 1975, and formed the underlying presumption of a set of provisions, some of which have been modified or eliminated, but others of which are still in force and are part of the current bones of the system standard.

The modified provisions include Article 237(2) of the Civil Code, which, in the version in place prior to the filiation reforms, (Article 12(1) of Legislative Decree No. 154 of 2013), provided that one of the factors for establishing filial status was having "always had the father's surname." On the contrary, former Article 33(1) of Presidential Decree No. 396 of 2000, which provided, among the rules on marital status, that "legitimate children shall have the father's surname," was eliminated entirely, by Article 1(1)(*e*)(1) of Presidential Decree No. 26 (Regulation implementing Article 5(1) of Law No.219 of 10 December 2012, on filiation).

Coming now to the provisions that are still in force, the first that bears mentioning is Article 299(3) of the Civil Code, on the adoption of adults by married couples. It provided and continues to provide, even after being replaced by Article 61 of Law No. 184 of 4 May 1983 (Minor Children's Right to a Family), that "the adoptee shall take the husband's surname."

The same rule can be found in Article 27(1) of Law No. 184 of 1983, concerning adoption pursuant to Title II of the law, which establishes that adopted children shall take and pass on the surname of the adoptive parents. The surname, in keeping with the status of a child born into the marriage of the adoptive spouses, is unequivocally that of the husband. This is clear from the text of paragraph 2 of the same provision, which provides for "the adoptee to take the surname of [the wife's] family," only in cases of adoption by a wife who is separated from her spouse.

The rules governing marital status also contained, and continue to contain, the

presumption that children will receive their father's surname. This presumption emerges in the prohibition on giving children the same first name as their living father, brother, or sister (this rule currently appears in Article 34 of Presidential Decree No. 396 of 2000, while it was originally contained in Article 72 of Royal Decree No. 1238 of 1939, later eliminated by Article 109(2) of Presidential Decree No. 396 of 2000).

Finally, Article 262(1)(2) of the Civil Code itself must be included in the list of provisions that take the system standard as given.

The rule for assigning surnames to children born to married couples must be struck down as a consequence deriving from the unconstitutionality of Article 262(1)(2) of the Civil Code. This is due to the substantial overlap of their contents; and, indeed, the challenged provision is among those that contributed to creating the system standard.

As a result, the rule assigning surnames to children born to married couples is unconstitutional, to the extent that it provides for giving children the father's surname, rather than providing that the child be given the surnames of both parents, in the order agreed upon by them, except in the event that, at the time of registering the child's birth, the spouses agree to give the child only one of their surnames.

14.2.– For the reasons laid out above in reference to the rule for assigning surnames to children born in marriage, Article 299(3) of the Civil Code must be declared unconstitutional, as a matter of consequence. This provision, which deals with the adoption of adults by married couples, provides that, "the adoptee shall take the husband's surname."

Article 299(3) of the Civil Code is, therefore, unconstitutional, to the extent to which it provides that adoptees must take the husband's surname, instead of providing that the adoptee shall take the surnames of the adoptive parents, in the order agreed upon by them, unless they agree during adoption proceedings to give the adoptee only one of their surnames.

14.3.– Again for the same reasons laid out with regard to the rule for assigning surnames to children born to married couples, and as a matter of consequence, Article 27 of Law No. 184 of 1983 must be declared unconstitutional. Under this provision, an adoptee, through adoption, "takes on and transmits the surname" of the adoptive parents, an expression interpreted unequivocally to mean the husband's surname (as mentioned at point 14.1).

Article 27 of Law No. 184 of 1983 is, therefore, unconstitutional, to the extent that it provides that adoptees shall take the surname of the adoptive parents, instead of providing that adoptees shall take the surnames of the adoptive parents, in the order agreed upon by them, unless they agree during adoption proceedings to give the adoptee only one of their surnames.

15.– Together with these rulings of unconstitutionality, this Court must also extend a twofold invitation to the legislator.

15.1.– First, legislative action is needed to prevent the attribution of both parents' surnames from causing the multiplication of surnames across future generations, thereby undermining the identification function of surnames.

Action of this kind is particularly pressing, given that several legal provisions have, since 2006, contributed to the use of double surnames.

These came first in the form of administrative practice (Interior Ministry, Internal and Local Affairs Department, Circular No. 21 of 30 May 2006, "Inherent difficulties of assigning maternal surnames," Circular No. 15 of 12 November 2008, "Clarifications on name and surname changes, pursuant to Articles 84 and following of Presidential Decree

No. 396/2000," and Circular No. 14 of 21 May 2012, "Presidential Decree No. 54 of 13 March 2012: Modifications to Presidential Decree No. 396/2000 on the procedures for changing surnames"). Then, the targeted modification of Article 89 of Presidential Decree No. 396 of 2000 by Article 2 of Presidential Decree No. 54 of 13 March 2012 (Rules modifying the provisions on marital status, in relation to the rules governing names and surnames envisaged by Title X of Presidential Decree No. 396 of 3 November 2000) broadened the circumstances under which changes can be made to names or surnames, including by adding a second surname (as a rule that of the mother).

Later, this Court's Judgment No. 286 of 2016 allowed the surname of the mother to be given together with that of the father in accordance with the agreement of the parents. Finally, the present ruling makes giving the surname of both parents the general rule.

Given the new rule, it is necessary to preserve the function of the surname for purposes of identity and identification, both legally and socially, in public and private law relationships. This is incompatible with a mechanism that multiplies the number of surnames with the passage of generations.

Given the need to ensure that surnames retain their function, and relatedly the overriding interests of the child, it would be appropriate for parents with two surnames, memorializing two branches of their family, to choose which of the two best represents their parental relationship, unless of course the parents choose to give their child one of their double surnames.

15.2.– Second, it is up to the legislator to weigh the interests of children to have the same surname as their brothers and sisters (and not a different surname given at the cost of the child's own interest in their family identity). This purpose could be pursued by allowing the choice of surname to be made only at the time of contemporaneous acknowledgment of the couple's first child (or at the time of the child's birth to a married couple, or of their adoption), and then make the choice binding with regard to the surnames of any additional children acknowledged contemporaneously by the same parents (or born to the same married couple, or adopted by the same couple).

16.– Finally, it bears specifying that all the provisions here declared unconstitutional concern the time when a surname is given to a child and, thus, this judgment will apply, starting from the day after its publication in the *Official Journal*, to children who have not yet been given a surname, including those involved in pending legal proceedings to determine the surname.

Once a surname is assigned, it embodies the core of the new legal and social identity of the person. This means that any potential matters affecting filial status or modifications to the surname shall be governed by different rules from the ones governing the initial assignment of the name.

Any petitions for a surname change, in the absence of specific action by the legislator, must be governed by the procedure under Article 89 of Presidential Decree No. 396 of 2000, as replaced by Article 2(1) of Presidential Decree No. 54 of 2012.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

1) *declares* that Article 262(1) of the Civil Code is unconstitutional to the extent that it provides, for children acknowledged contemporaneously by both parents, that the child shall be given the father's surname, instead of providing that the child be given the surnames of both parents, in the order agreed upon by them, unless they agree, at the time

of the acknowledgement, to give the child only one of their surnames;

2) *declares*, as a matter of consequence, pursuant to Article 27 of Law No. 87 of 11 March 1953 (Provisions on the Constitution and Function of the Constitutional Court), that the rule which derives from Articles 262(1) and 299(3) of the Civil Code, Article 27(1) of Law No. 184 of 4 May 1983 (Minor Children's Right to a family), and Article 34 of Presidential Decree No. 396 of 3 November 2000 (Provisions Reforming and Simplifying the Rules on Marital Status, Pursuant to Article 2(12) of Law No. 127 of 15 May 1997), is unconstitutional to the extent it provides that children born to married parents shall take the father's surname, instead of providing that the child be given the surnames of both parents, in the order agreed upon by them, unless they agree at the time of birth to give the child only one of their surnames;

3) *declares*, as a matter of consequence, pursuant to Article 27 of Law No. 87 of 1953, that Article 299(3) of the Civil Code is unconstitutional, to the extent that it provides that, "adoptees shall take the husband's surname," instead of providing that adoptees be given the surnames of both adoptive parents, in the order agreed upon by them, unless they agree during the adoption process to give the adoptee only one of their surnames;

4) *declares*, as a matter of consequence, pursuant to Article 27 of Law No. 87 of 1953, that Article 27(1) of Law No. 184 of 1983 is unconstitutional, to the extent that it provides that adoptees shall take the surname of their adoptive parents, instead of providing that the adoptee shall take the surnames of the adoptive parents, in the order agreed upon by them, unless they agree during the adoption process to give the adoptee only one of their surnames;

5) *declares* that the questions as to the constitutionality of Articles 237, 262, and 299 of the Civil Code, Article 72(1) of Royal Decree No. 1238 of 9 July 1939 (Rules Governing Marital Status), and Articles 33 and 34 of Presidential Decree No. 396 of 2000, raised by the Court of Appeal of Potenza in reference to Articles 2, 3, 29(2), and 117(1) of the Constitution, the last in relation to Articles 8 and 14 of the European Convention on Human Rights (ECHR), signed in Rome on 4 November 1950, ratified and executed by Law No. 848 of 4 August 1955, with the referral order cited in the Headnote, are inadmissible.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, 27 April 2022.

Signed by:

Giuliano Amato, President

Emanuela Navarretta, Author of the Judgment