



Press Office of the Constitutional Court

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*Press release of 11 February 2021*

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## CHILDREN’S SURNAMES: THE CONSTITUTIONAL COURT DOUBTS WHETHER AGREEMENT ON THE SURNAME CAN GUARANTEE FULL EQUALITY BETWEEN THE PARENTS

Can agreement between parents as to their child’s surname overcome the inequality arising when, in cases where there is no such agreement, the child must take the father’s surname?

Given this uncertainty, the Constitutional Court raised before itself a question as to the constitutionality of Article 262(1) of the Civil Code, which applies to children born out of wedlock (see the [Press release of 14 January 2021](#)). [Order No. 18](#), filed today (Judge Rapporteur: Vice President Giuliano Amato) explains why this question is preliminary with respect to the one raised by the Ordinary Court of Bolzano. The Bolzano court had requested that the above provision be declared unconstitutional insofar as it does not provide that if the parents agree, the child can take the maternal surname instead of the paternal one.

In the Order, the Court first referred to its own case law to recall that – regardless of how questions as to constitutionality are formulated – this “cannot prevent the Court from engaging in a full examination of the system in which the challenged provisions exist”.

In support of its decision to self-refer the question as to constitutionality, the Court then noted that if the argument advanced by the Ordinary Court of Bolzano were to be accepted, the rule requiring acquisition of only the father’s surname would apply whenever parents do not agree on their child’s surname. As these are the cases more likely to arise in practice, the pre-eminence of paternal surnames would thus be confirmed, even though the Constitutional Court has long

acknowledged that this outcome is incompatible with the fundamental value of equality and has asked the Legislator to intervene on several occasions.

As different solutions in law are possible and the Legislator's discretion therefore remains, the Court considered it necessary to raise – based on Articles 2, 3 and 117(1) of the Constitution, the latter with reference to Articles 8 and 14 ECHR – the question as to the constitutionality of Article 262(1) of the Civil Code, insofar as where parents do not agree on their child's surname, the father's surname must be transmitted at birth, and not those of both parents.

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