Headnote

to the Judgment of the First Senate of 18 February 2004

– 1 BvR 193/97 –

It is not compatible with Article 2.1 in conjunction with Article 1.1 of the Basic Law (*Grundgesetz* – GG) that according to § 1355.2 of the Civil Code (*Bürgerliches Gesetzbuch* – BGB) the name of a spouse acquired and held by earlier conclusion of marriage cannot be determined as the married name in his or her new marriage.

FEDERAL CONSTITUTIONAL COURT

– 1 BvR 193/97 –

Pronounced
on 18 February 2004
Ms Achilles
Amtsinspektorin
as Registrar
of the Court Registry

IN THE NAME OF THE PEOPLE

In the proceedings
on
the constitutional complaint

1. of Ms A(...),

2. of Dr. B(…)

– authorised representatives: Rechtsanwälte […] –

1. directly against

   the order of the Berlin Higher Regional Court (*Kammergericht*) of 26 November 1996 – 1 W 7237/95 –,

2. indirectly against

   § 1355.2 of the Civil Code in the version of the Act Amending the Law on Family Names (*Familiennamensrechtsgesetz* – FamNamRG) of 16 December 1993 (Federal Law Gazette, *Bundesgesetzblatt* – BGBl I p. 2054).

the Federal Constitutional Court – First Senate –

with the participation of Justices

President Papier,

Haas,

Hömig,

Steiner,

Hohmann-Dennhardt,

Hoffmann-Riem,

Bryde,

Gaier

held on the basis of the oral hearing of 4 November 2003:

Judgment:

1. **§ 1355.2 of the Civil Code is not compatible with Article 2.1 in conjunction with Article 1.1 of the Basic Law (*Grundgesetz* – GG) insofar as it rules out spouses being able to determine as their married name a family name acquired through previous conclusion of marriage which one of them holds at the time of conclusion of marriage.**
2. **§ 1355.2 of the Civil Code is to be applied until the entry into force of a new statutory regulation subject to the proviso that, if the spouses wish to determine on conclusion of marriage a family name acquired by one of the spouses in a previous marriage as their married name after the date of the publication of this ruling in the Federal Law Gazette, each spouse shall provisionally retain the name held by him or her at the time of conclusion of marriage until such time as a new statutory regulation is adopted.**
3. **The order of the Berlin Higher Regional Court of 26 November 1996 – 1 W 7237/95 – violates the complainant re 1 in her fundamental right under Article 2.1 in conjunction with Article 1.1 of the Basic Law. The order is overturned and the case referred back to the Berlin Higher Regional Court.**
4. **The constitutional complaint of the complainant re 2 is dismissed as inadmissible.**

R e a s o n s :

A.

The constitutional complaint relates to the question of the constitutionality of § 1355.2 of the Civil Code, according to which spouses who wish to have a joint family name as married name may only determine for this the birth name of the husband or the wife, but not a family name acquired through previous conclusion of marriage held by one of the two at the time of conclusion of marriage. 1

I.

1. In its original version of 18 August 1896 (Reich Law Gazette (*Reichsgesetzblatt* – RGBl) p. 195), § 1355 of the Civil Code provided that the wife received the family name of the husband as her married name on conclusion of marriage. She was later able to add her birth name to this on the basis of the Equal Rights Act (*Gleichberechtigungsgesetz*) of 18 June 1957 (Federal Law Gazette I p. 609). § 1355 of the Civil Code was amended with the First Act Reforming the Law on Marriage and Family (*Erstes Gesetz zur Reform des Ehe- und Familienrechts*) of 14 June 1976 (Federal Law Gazette I p. 1421) such that the spouses could now select the birth name of the husband or the wife as their married name. However, were the spouses not to agree on the choice of married name, the priority of the husband's name continued to apply. The restriction to the "ancestral" name was to rule out the use of a name acquired through previous conclusion of marriage for designation as the married name. This was reasoned by the wish to prevent abusive name transfers for which the new law on names might provide a certain incentive (see *Bundestag* printed paper (*Bundestagsdrucksache – BTDrucks*) 7/650, p. 97). At the same time, the husband was deprived of the right to prohibit his divorced wife from continuing to use the name acquired by the conclusion of marriage under certain preconditions. 2

On the other hand, according to § 7.1 of the Family Code (*Familiengesetzbuch* – FGB) of 20 December 1965 (Law Gazette (*Gesetzblatt* – GBl) 1966 I p. 1), the name of the husband or wife used at the time of the conclusion of marriage could be selected as the married name in the German Democratic Republic. 3

2. a) After the Federal Constitutional Court had declared § 1355.2 sentence 2 of the Civil Code, which determined the prevalence of the husband's name if the spouses were unable to agree on a married name, to be unconstitutional by order of 5 March 1991 (Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts* – BVerfGE) 84, 9), the draft Bill of the Federal Government to reform the law on family names of 14 August 1992 (*Bundestag* printed paper 12/3163) initially provided that the spouses, in addition to their birth names, were also to be able to determine as their married name the respective name used at the time of the conclusion of marriage in order to make it easier to decide on a married name by thus expanding the options available. It was stated as grounds that it had indeed been taken into account that the possibility to determine a name acquired by marriage as the married name of a new marriage might hurt the feelings of the previous spouse or of his or her relatives. Such sensitivities would however of necessity have to be accepted as unavoidable. On conclusion of marriage, the spouse whose family name was not determined as the married name was said to acquire a right to use the family name of the other spouse that was designated as the married name not only for the duration of the marriage. The spouse was, rather, said to be entitled to this name as a right of his or her own on the basis of the joint designation by the spouses. The possibility to pass on a name acquired by marriage to a new marriage was said to avoid difficulties alleged to arise if divorced or widowed spouses married one another. Insofar 4

as both had a family name acquired in the previous marriage, according to the law previously valid they would of necessity have to resort to their birth names, which they might not have used for decades, when determining their married name. Granting to the spouse of the previous marriage the right to prohibit his or her former spouse from taking the name acquired in the previous marriage into the new marriage if this appeared to be abusive was said to counter the independent entitlement of each spouse to his or her family name acquired by conclusion of marriage (see *Bundestag* printed paper 12/3163, p. 11-12).

b) This planned provision was however largely rejected in the deliberations on the draft Bill and in the hearing that was held (see Stenographic Record, 12th legislative period, 80th session of the *Bundestag* Committee on Legal Affairs of 30 June 1993). Also the nobility associations made a public statement and protested, invoking the "title inflation" which might then be imminent, against the planned expanded possibility in selecting married names. The Committee on Legal Affairs of the *Bundestag*, finally, recommended in the interest of the divorced spouse or of the surviving dependants of the deceased spouse, and to avert the quite possible danger of abuse in this area, to restrict the selection of married name once more to the spouse's birth name (see *Bundestag* printed paper 12/5982, pp. 4 and 18). 5

§ 1355.2 of the Civil Code thus took on the following version by virtue of the Act Reforming the Law on Family Names of 16 December 1993 (Federal Law Gazette I p. 2054), which entered into force in this respect on 1 April 1994: 6

The spouses may designate the birth name of the husband or the birth name of the wife as their married name by declaration to the registrar. 7

3. According to the law as it stands, the name acquired in an earlier marriage cannot hence be passed on to a new spouse as a married name unless the spouses are of mixed-nationality origin and, according to Article 10.2 sentence 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch* – EGBGB), can also select for themselves the name of a spouse acquired by previous marriage according to the law of the state to which one spouse belongs. By contrast, the name acquired in a previous marriage held by one parent may be passed on to a child as birth name (§ 1617.1 and § 1617 a.1 of the Civil Code). Equally, the adopted child receives the family name of the adopter regardless of whether this name is the birth name of the adopting party or one acquired by marriage (§ 1757.1 of the Civil Code). 8

4. Those who renounce their birth name on marriage, who take on the name of their spouse as their married name, who retain this name after the death of the spouse or who divorce and re-marry, but cannot determine the name held as the married name for this marriage, are affected by the restriction of the selection of the married name to the birth names of the spouses in § 1355.2 of the Civil Code. The vast majority of these are women. The reason for this is, firstly, that until 1976 the married name was always the name of the husband, so that women had to give up their names on marriage, and that, until 1994, the name of the husband also took statutory priority if there 9

was disagreement between the spouses on the designation of the married name. Secondly, however, even after the reform of the law on family names in 1994, the husband's name was still determined as the married name in most cases. No official statistics are kept on this. Enquiries by the Federal Constitutional Court with the registry offices of Hamburg, Hanover, Frankfurt and Munich however confirm the figures contained in other surveys […], and printed paper for 2001 and 2002 that 85 to 86 % of those marrying there selected a joint married name, and in doing so 93 to 97 % selected the name of the husband. It is furthermore significant in this context that the share of re-marriages after divorce has increased in recent years as against the total number of conclusions of marriage. It accounted for 36 % of Western German and 41 % of Eastern German marriages in 2000 […].

II.

1. The complainants married in the USA in 1993. On their return to the Federal Republic of Germany, they expressed to the registrar a wish to designate as their married name the name, acquired in her previous marriage, which the complainant re 1 had held for many years at the time of the conclusion of marriage. The registrar refused to issue such a certificate arguing that it was not the birth name of one of the complainants, and that only this could be designated as their married name. The Local Court (*Amtsgericht*) rejected the complainants' application to instruct the registrar to issue the desired certificate. The complaints directed against this were also unsuccessful. The Regional Court (*Landgericht*) made reference to the unambiguous provision contained in § 1355.2 of the Civil Code, and took the view that no separate right to the name was acquired on assumption of the birth name of the spouse, regardless of the fate of the marriage. Rather, the married name remained only borrowed, and hence could not be passed on to a new marriage. The Berlin Higher Regional Court […] confirmed the ruling of the Regional Court […]. 10

2. The constitutional complaint – with which the complainants complain of a violation of their rights of personality under Article 2 of the Basic Law, as well as of their rights under Article 6 of the Basic Law – targets this ruling, and indirectly § 1355.2 of the Civil Code. Furthermore, the complainants consider the general principle of equality under Article 3.1 of the Basic Law to have been violated. 11

[…] 12-18

B.

The constitutional complaint of the complainant re 1 is admissible. By contrast, the constitutional complaint of the complainant re 2 is inadmissible. He has not substantiated to the degree required by the law (§ 23.1 and § 92 of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz – BVerfGG*)) to what degree his own fundamental rights could have been violated by not being able to acquire the name held by the complainant re 1 at the time of the conclusion of marriage as his married 19

name according to § 1355.2 of the Civil Code. […]

C.

The constitutional complaint of the complainant re 1 is well-founded. § 1355.2 of the Civil Code is not compatible with Article 2.1 in conjunction with Article 1.1 of the Basic Law insofar as it provides that spouses may only select as their joint married name the birth name of the husband or wife, but not the family name acquired through a previous conclusion of marriage which is held by one of the two at the time of conclusion of marriage. The order of the Berlin Higher Regional Court, which is based on § 1355.2 of the Civil Code, violates the complainant re 1 in her general right of personality under Article 2.1 in conjunction with Article 1.1 of the Basic Law. 20

I.

1. Article 2.1 in conjunction with Article 1.1 of the Basic Law protects the name of a person as an expression of his or her identity and individuality. In addition to the forename, the protection also covers the family name (see BVerfGE 78, 38 (49); 84, 9 (22); 97, 391 (399); 104, 373 (385)). 21

a) When a child receives a birth name as a family name, he or she links this name with his or her individuality. Subsequently, it helps him or her to develop his or her identity and to express it towards others (see BVerfGE 104, 373 (385)). In this function of serving the individual as a means of self-recognition, and at the same time of distinguishability from others, the legal system has to respect and protect the name of its bearer (see BVerfGE 97, 391 (399)). 22

b) The family name acquired through choice of married name also enjoys the full protection of Article 2.1 in conjunction with Article 1.1 of the Basic Law. 23

aa) Creating and fleshing out the law on family names is a matter for the legislature (see BVerfGE 78, 38 (49)), which has prescribed in § 1355.1 of the Civil Code in a constitutionally unobjectionable manner for spouses to hold a married name as a standard in order to lend expression to the unity of the family in the joint name (see BVerfGE 104, 373 (387)). If the spouses opt for a joint name in line with this rule, this requires one of the spouses to renounce the previous name and accept the name of the other spouse as a marital and family name which he or she should now use and which accompanies him or her in his or her further life. The married name selected by both spouses expresses not only the foundation of a new family unit. Rather, it is a new married name and at the same time a family name for both spouses, with which each of them will be identified from the date of selecting the name. It hence becomes a part and expression of the separate personality of the individual name-bearer which is connected to the name and develops further, and hence enjoys the protection of the general right of personality. 24

bb) This protection of the name selected and acquired on conclusion of marriage is 25

not restricted to the duration of the marriage. Article 6.1 of the Basic Law requires neither the holding of a uniform family name in marriage (see BVerfGE 104, 373 (387)), nor the renunciation of a name held as married name on dissolution of the marriage. The protection also of the name acquired by selection of married name arises solely from the right of personality of the name-bearer. A name becomes an expression of the personality of a person by virtue of being held after acquisition by a name-bearer, so that an identity of name and person arises and by these means the person finds themselves reflected in this name and is recognised by others. This identity-creating impact of the name is not influenced by the occasion and reason for acquisition of the name. The latter may hence not restrict its constitutional protection. This also applies to the name acquired by selection of a married name. Even if the name is formed out of the name of the other spouse, it becomes the personal name of its new bearer, supersedes his or her previous name and now becomes a part of the personality of its bearer. As a personal and not only a borrowed name, it therefore enjoys the protection of Article 2.1 in conjunction with Article 1.1 of the Basic Law, regardless of whether the marriage which has been the occasion of the acquisition of the name continues to exist.

2. § 1355.2 of the Civil Code encroaches on the protection of the name which has been acquired by selection of a married name and used since that time. 26

The general right of personality protects the name-bearer against removal or imposed change of the name used by him or her (see BVerfGE 84, 9 (22)). This right to one's own name and to its retention is respected by the law on married names insofar as the spouses are not forced by § 1355.1 of the Civil Code to determine a joint married name, but are able to also retain the names that they used at the time of conclusion of marriage after conclusion of marriage. If however the spouses wish to use a joint married name, they are prevented by § 1355.2 of the Civil Code from determining the name used by one spouse as their married name if it is no longer the birth name of the spouse, but a name acquired in a previous marriage through statutory name allocation or selection. 27

With this restriction of the selection of names, the legislature encroaches on the right to bear a name of the bearer of this acquired name. It treats the acquired name as against the birth name as a name used of lower quality by only permitting the choice of the latter, although the protection of personality equally covers the name acquired by marriage and that acquired by birth. Hence, the bearer of the acquired name is forced in selecting a joint married name to once more renounce his or her used name and to take on a new one. He or she can only either acquire the name of his or her spouse or, together with the latter, fall back on his or her birth name which he or she no longer uses, but which has no longer participated in his or her personality development since acquisition of the used name, and in this respect is not an expression of his or her present identity. This is tantamount to a deprivation of name protection, given that this covers as a priority the name which a person has made their own and which he or she uses, and not the one which he or she has renounced and which 28

hence only reminds one of the origins of the person.

3. § 1355.2 of the Civil Code disproportionately encroaches on the right of personality of the name-bearer to protection of the name which he or she has used by excluding the name used as a result of the selection of a married name in determining the married name. 29

In view of the high value attaching to the right to one's own name, encroachments on the right to bear a name may not take place without significant reasons and only in compliance with the principle of proportionality (see BVerfGE 78, 38 (49)). § 1355.2 of the Civil Code does not meet these requirements. 30

a) Having said that, one of the grounds on which the statutory provision is based is certainly significant. 31

aa) With the provision, the legislature has intended to take account of the interests of the divorced spouse and those of his or her surviving dependants (see *Bundestag* printed paper 12/5982, pp. 4 and 18). In doing so it took particular consideration of the feelings of the spouse from the previous family community […], who may find it burdensome or insulting if his or her name is designated as the married name of a new marriage of his or her divorced spouse, and hence is passed on to his or her new partner, so that the latter and he or she have identical names. Because the family name is also used to draw lines of descent, to depict family contexts or to make the family status of an individual clear (see BVerfGE 104, 373 (386)), this might also lead to family ties being concluded where they have in fact been broken and do not exist. 32

bb) By contrast, the indication of the legislature of an imminent risk of abuse alleged to be linked to the possibility to also select the name acquired in an earlier marriage as the new married name does not justify the encroachment on the right to a name. Neither did it become clear in the legislative procedure which dangers of abuse the legislature envisioned here, nor are such dangers sufficiently recognisable. If the representatives of the Federal Government stated in the oral hearing that an abuse could not be ruled out with particularly "beautiful names", which could take on a special market value were the selection to be free, it is also not evident here what the abuse is likely to be. That it may be the nice sound of a name which tips the scale in the selection of a married name does not make its selection in the second marriage more amenable to abuse than in the first marriage, even if such a conduct in selection may result in many uses of this name. The use of the possibility to determine, as the name of a new marriage of the name-bearer, a name with a noble designation acquired by means of selection as the married name also does not constitute an abuse. In the event of the abuse to be averted lying in the danger of fictitious marriages being entered into by those concluding them only for the sake of the name in order to divorce after acquiring the name and to take the name into a new marriage […], such a danger can be encountered with the means which help to prevent such fictitious marriages, but not with the law on names. Apart from this, the prevention of this danger would not primarily protect the interests of the divorced spouse that the legislature 33

was concerned with, but those of his or her family.

b) The encroachment by § 1355.2 of the Civil Code on the right to bear a name effects a disproportionate impairment of the right of personality of the bearer of an acquired name. 34

It emerges from the consideration between the severity of the encroachment and the significance of the underlying reasons that the provision is not in compliance with Article 2.1 in conjunction with Article 1.1 of the Basic Law. 35

aa) The fundamental rights of the bearers of an acquired name which are encroached upon are not opposed by any equivalent interests of others protected by fundamental rights which might justify the provision of § 1355.2 of the Civil Code. 36

The right to one's own name, also accruing to the divorced spouse, ensues from the protection of personality according to Article 2.1 in conjunction with Article 1.1 of the Basic Law, which covers one's own identity and privacy and which is expressed in the name. However, this does not give rise to a right to determine the name of another person (see BVerfGE 104, 373 (392)). For this reason, neither a right to select a name for another person, nor a right to prohibit another person to bear the same name as oneself, may be derived from the right of personality: The constitution does not contain a right to exclusivity of names. The desire of a former spouse for their own name not to be designated as the married name of a new union on the part of his or her divorced spouse, and hence also the name of the new partner, is understandable. It is however not equivalent to the significance of the protection of names under fundamental rights on which § 1355.2 of the Civil Code encroaches. 37

bb) The encroachment on fundamental rights takes place with the person who has already forgone his or own name as his or her married name in the previous marriage in favour of the name of his or her spouse or had to forgo it because of statutory requirements which have now been recognised as unconstitutional. When remarrying, he or she is forced once more by § 1355.2 of the Civil Code to give up the name which he or she used and to replace it with another one if he or she wishes to use a joint married name with his or her new spouse. By contrast, his or her divorced spouse has been able to continue to use his or her used birth name in marriage as a married name, and over and above this is not prevented by § 1355.2 of the Civil Code from retaining this name as married name for a subsequent marriage and passing it on to the new spouse, although this too may hurt the feelings of the former partner. The burden resulting from a two-fold name change on the bearer of a name acquired by selection of a married name is in this respect only opposed by the unilateral consideration of the interest in not finding his or her name in the name of the new partner of his or her divorced spouse. This interest is only considered by virtue of § 1355.2 of the Civil Code with the party who is able to retain his or her birth name as married name, but not with the person who acquires a new name by selecting a married name. The latter is not protected against the new partner of his or her divorced spouse also acquiring this name. 38

cc) The unilateral consideration of the interest of the party who has retained his or her birth name as married name is also unable to justify the encroachment on fundamental rights because it establishes ideas which do not do justice to the constitutionally prescribed perception of equal rights of husband and wife contained in the law on married names. 39

When the law on married names still provided in a manner contrary to equality that the wife received the name of her husband on conclusion of marriage, her interest in not sharing this name with a future wife of her spouse was given no consideration. When the legislature was obliged to also make the name of the wife available for selection for the married name, it then considered it to be necessary to comply with such an interest of the husband with § 1355.2 of the Civil Code. This provision acts in favour of the husband because the restriction of the option to the birth name leaves open to the party who prevails with his or her name in the marriage the possibility to once more also select his or her name in a new marriage as a married name; this was always the husband on conclusion of marriage until 1976 because of the provision valid at that time, which was later declared unconstitutional, since his name became the married name. In this respect, the restriction of § 1355.2 of the Civil Code initially exclusively affected divorced or widowed women whose right to the used name acquired through conclusion of marriage was encroached on by § 1355.2 of the Civil Code on remarriage. 40

The Reform Act of 14 June 1976 also ultimately brought about little change as to this effect since the husband's name continued to predominate if the spouses were unable to agree on the selection of the married name. In fact, the dominance of the husband's name in the selection of the married name has continued to the present day. The husband's name is still selected as married name in the vast majority of cases of the conclusion of marriage, so that to the present day above all women are affected if § 1355.2 of the Civil Code rules out the name acquired and used by selection of married name on re-marriage as married name. At the same time, this maintains the idea that if a name becomes the married name, it is not equally the property of both spouses, but continues to primarily belong to the previous bearer of this name, who is hence said to have greater power to dispose of the name. 41

dd) Finally, also the fact that the spouse who bears a name acquired through previous conclusion of marriage may continue to use it as an additional name in a new marriage according to § 1355.4 of the Civil Code makes the encroachment on the right in the used name unacceptable. 42

If spouses opt to select a joint married name in which only one of the names of the spouses can be selected, the wish of the spouse whose name is not considered in the selection to also be able to express in the joint name his or her identity as conveyed by the previously used name is accommodated by the right being granted to him or her to add his or her previously-used name to the married name (see BVerfGE 104, 373 (388)). This option however does not sufficiently alleviate the impact of the im- 43

pugned provision in this respect. § 1355.2 of the Civil Code already deprives spouses of the opportunity to determine a name previously used by a spouse as a married name at all if this is a name acquired by conclusion of marriage. This restriction of the option leads to a situation in which a spouse who has a name acquired by conclusion of marriage is excluded with this from the outset in the selection of the married name, even if he or she is in agreement with the other spouse in his or her wish to select this name as a married name. Such an encroachment on the decision of the spouses in selecting a married name is however not made acceptable for the name-bearer by being able to continue to use it at least as an additional name.

II.

The order of the Berlin Higher Regional Court based on the unconstitutional provision violates the complainant re 1 in her fundamental right under Article 2.1 in conjunction with Article 1.1 of the Basic Law. Since a ruling towards the complainants can only be handed down uniformly, the entire order is to be overturned. 44

D.

I.

If a provision is not in accordance with the Basic Law, it is in principle to be declared null and void (§ 95.3 sentences 1 and 2 of the Federal Constitutional Court Act). This however does not apply if there are several possibilities to eliminate the breach of the constitution and the declaration of nullity would encroach on the latitude of the legislature (see BVerfGE 77, 308 (337); 84, 168 (186)). Accordingly, a declaration of nullity is impossible in this respect because it cannot be ruled out that the legislature would take this decision as an occasion to once more reform the law on married names. 45

The legislature is obliged to bring the law into accordance with the Basic Law by 31 March 2005. 46

II.

1. Within the scope of the declaration of incompatibility, the provision may no longer be applied by the courts and administrative authorities (see BVerfGE 82, 126 (155); 84, 168 (187)). No exception from this principle is necessary here. Such would lead to new breaches of the constitution which could not be reversed by a subsequent new provision, or only with a further impairment of the right of personality of those concerned, since it cannot be ruled out that a new statutory provision could lead to a further name change. 47

2. However, the non-applicability of the provision may not lead to a situation in which conclusions of marriage are only carried out until a new statutory provision is passed if the spouses select one of their birth names as their married name. Such an interpretation of the remaining part of § 1355 of the Civil Code cannot be considered in 48

constitutional terms because it would lead to an obstacle to marriage for which there is no statutory provision. Until such time as there is a new statutory provision, a default arrangement is therefore needed for cases in which a name acquired by selection of a married name is to be designated as the married name. It appears here to be the least harmful solution for the spouses to initially retain the names which they had prior to conclusion of marriage. This arrangement does not pre-empt the legislature and avoids multiple name changes. After the statute has entered into force, it will then be necessary to choose which name the spouses will bear in future.

3. For spouses who married prior to the publication of this ruling, the consequences under the law on names initially remain valid which emerged from § 1355.2 of the Civil Code. The legislature must however make a separate arrangement for these cases. It is not necessary here for reasons of legal certainty and legal peace to retroactively eliminate all the consequences of the arrangement. The legislature must however ensure that impacts of the previous unconstitutional legal situation which are disadvantageous for the future can be eliminated (see BVerfGE 84, 9 (24)). The statutory regulation subsequently required is certainly to cover all spouses who were not able to designate as their married name the name held by one of the partners and acquired by conclusion of marriage. They must be enabled in future to hold a name which emerges from an arrangement corresponding to the principle of equal rights. The more detailed content of the transitional arrangement depends on the structure of the future law on married names. 49

4. Insofar as proceedings regarding the designation of a name held by one spouse as a married name are pending with the courts, they can be suspended until the new statutory provision is passed in order to avoid cost disadvantages. 50

The ruling on the costs is based on § 34 a.2 of the Federal Constitutional Court Act. 51

Papier	Haas	Hömig
Steiner	Hohmann-Dennhardt	Hoffmann-Riem
Bryde		Gaier

Bundesverfassungsgericht, Urteil des Ersten Senats vom 18. Februar 2004 - 1 BvR 193/97

Zitiervorschlag BVerfG, Urteil des Ersten Senats vom 18. Februar 2004 - 1 BvR 193/97 - Rn. (1 - 51), http://www.bverfg.de/e/rs20040218_1bvr019397en.html

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