

Judgment of 12th November 2002, [SK 40/01](#)
**CONTENT OF A BIRTH CERTIFICATE FOLLOWING
 CONTESTING PATERNITY**

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Retaining, within a birth certificate, the personal details of a person whose paternity was effectively contested, whilst including a so-called additional mention of the child's biological father's voluntary acknowledgment of paternity [Civil Status Records Act 1986: Article 21 and Article 44(3)]	Right to protection of personal information [Constitution: Article 51(2) and (4)]

The civil status of natural persons is established on the basis of records filed in the Civil Status Register, maintained by the Civil Status Office on the basis of the Civil Status Records Act 1986. A birth certificate includes, inter alia, personal details of the child's parents.

Article 62 of the Family and Guardianship Code (hereinafter referred to as "the Code") creates a presumption of paternity in favour of the husband of the child's mother, where the child was born during their marriage or within 300 days following the termination or annulment thereof. A person regarded as the father on the basis of the presumption of paternity is recorded in the birth certificate as the child's father.

The presumption of paternity is rebuttable – its effects may be cancelled within the court procedure known as contesting paternity (Articles 63–71 of the Code). Where paternity has been effectively contested, the biological father may voluntarily acknowledge paternity (Article 72–79 of the Code). The unilateral act of voluntarily acknowledging paternity has *ex tunc* effects: the person having acknowledged paternity is legally considered as the child's father from the moment of its birth.

Where a man acknowledges paternity after another man's paternity has already been effectively contested, the challenged provisions of the Civil Status Records Act require that an additional mention is made on the birth certificate regarding the acknowledgement of paternity and alteration of the child's surname. Nevertheless, the personal details of the person previously considered to be the child's father are not deleted.

The constitutional complaint in the case summarised herein was lodged as a result of the following facts. The complainant, Mr. Krzysztof T., acknowledged paternity of Szymon M. following rebuttal of the presumption of paternity as regards the mother's husband – Szczepan M. The birth certificate was amended by inserting an appropriate additional mention. In the section entitled "father", the personal details of Szczepan M. remained. The complainant initiated a court action seeking rectification of his son's birth certificate, so as to delete reference to Szczepan M.'s paternity. Krzysztof T.'s action was not upheld by

courts of both instances, on the basis that the information recorded in the birth certificate was true. The Supreme Court refused to admit a cassation for consideration.

The constitutional complaint alleged that, following rebuttal of the presumption of paternity in respect of the mother's husband and the biological father's acknowledgement of paternity, the original record failed to reflect the truth. It was alleged to be insufficient to merely record the true state of affairs in the form of an additional mention, without also deleting the original information. The complainant alleged that this infringed the constitutional prohibition on organs of public authority collecting non-necessary information on citizens (Article 51(2)) and contravenes the right to demand correction or deletion of untrue information (Article 51(4) of the Constitution).

RULING

The challenged provisions conform to Article 51(2) and (4) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The right to protection of personal information, guaranteed in Article 51 of the Constitution, is a particular instrument for protecting the interests of individuals and is connected with the protection of their private life. Accordingly, this right is a specialised means for protecting the same values as are protected by Article 47 of the Constitution.
2. The contemporary understanding of the sphere of private life concerning personal information leads to extending protection to all personal information, regardless of its content – it may be information which could give rise to feelings of shame or embarrassment, or it may be information having indifferent value from the perspective of morality and customs. Protection is given to those values accentuating the possibility to conduct one's own affairs, and to decide about one's life and the type of personal relationships with others, with maximum freedom and, concomitantly, with minimum interference from the outside world.
3. Whilst the requirement of "necessity" in Article 51(2) of the Constitution is not defined here, it is a concept which relates to Article 31(3) (the principle of proportionality). It should be assumed that public authorities may acquire, collect and make accessible information on citizens only to the extent permitted by statute and necessary in a democratic State governed by the rule of law for its security, public order, environmental protection, public health, public morality or the rights and freedoms of other persons.
4. Information collected in civil status registers belongs to the category of personal information which, to a certain degree, falls within the concept of so-called sensitive information that, within the framework of privacy, is subject to especially intensive constitutional protection. Accordingly, civil status records create a register which is unavailable to the public, with the information being confidential and accessible only by a limited circle of people.

5. Civil status records enable identification of a natural person and determination of their legal position from the perspective of their civil status – in regards to both their current and past status. The proper determination of civil status (including past status) is not only in the interest of the person directly concerned but also in the interest of third parties and in the public interest. Furthermore, disclosure of all information regarding events affecting a person's civil status at each stage of their life constitutes a realisation of the right to know about one's own civil status and its shaping over time, falling within a broad understanding of personal interests. An interested person's knowledge of events affecting their civil status may eventually prove to be an indispensable requirement for realisation of certain rights (cf. Article 70 and Article 81 of the Code). The conclusion that the requirement of necessity envisaged in Article 51(2) of the Constitution is fulfilled is supported by the fact that no alternative method exists to collect information which would enable the same level of legal certainty to be achieved, taking into account the special importance of the civil status register, as is reflected in the exclusive possibility to rely on civil status records as evidence of the facts certified therein (cf. Article 4 of the Civil Status Records Act 1986).
6. Where a birth certificate records paternity determined on the basis of the statutory presumption that the child descended from a married couple (Article 62 of the Code) and this presumption was subsequently rebutted as inconsistent with reality, following which another person (the biological father) acknowledged paternity, it is justified – in light of the reasoning above – not to delete information about the person originally regarded as the father, but rather to amend the birth certificate with an additional mention, in accordance with the procedure envisaged in Article 21 and Article 44(3) of the Civil Status Records Act. It should not be forgotten that it is not the civil status of the parents that is to be determined but rather that of the child, whose interests should be given primary consideration.
7. In the light of Article 79(1) of the Constitution, a constitutional complaint may only relate to infringements of constitutionally guaranteed rights and freedoms insofar as such infringements result from the provisions of a statute or other normative act. The provisions challenged by the complainant should be clearly outlined in the content of the complaint (Article 47(1) point 1 of the Constitutional Tribunal Act 1997). Individual decisions made on the basis of such provisions may not be reviewed within the constitutional complaint procedure.

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

Art. 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Art. 47. Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.

Art. 51. 1. No one may be obliged, except on the basis of statute, to disclose information concerning his person.
 2. Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state governed by the rule of law.
 3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.
 4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information ac-

quired by means contrary to statute.

5. Principles and procedures for collection of and access to information shall be specified by statute.

Art. 79. 1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.

CT Act

Art. 47. 1. The complaint shall, apart from the requirements referring to the procedural letters, include the following:

- 1) a precise identification of the statute or another normative act on the basis of which a court or another organ of public administration has given ultimate decision in respect of freedoms or rights or obligations determined in the Constitution and which is challenged by the person making the complaint for the confirmation of non-conformity to the Constitution,

[...]