

AS TO THE ADMISSIBILITY OF

Application No. 16878/90
by T.B.
against Sweden

The European Commission of Human Rights sitting in private on
29 June 1992, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 April 1990 by
T.B. against Sweden and registered on 17 July 1990 under file No.
16878/90;

Having regard to the report provided for in Rule 47 of the Rules
of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Swedish citizen born in 1913. She is retired
and resides at Märsta.

The facts of the case, as submitted by the applicant, may be
summarised as follows.

Particular circumstances of the case

On 24 August 1987 the applicant requested that her surname be
changed to "X.", alternatively to "X.". The first-mentioned surname had
been carried by ascendants on her father's side, while the latter was
a new name. Her present surname belongs to her former husband, whom she
divorced in 1946. Her maiden name is "Z.".

Following a preliminary examination of the request the Patent and
Registration Office (patent- och registreringsverket) on 22 September
1987 informed the applicant that, according to its practice, a change
of surname could only be allowed where the proposed name had been used
by an ancestor not more than 75 to 80 years back. Moreover, the name

should have been used by at least two generations. In view of this the applicant was given an opportunity to change her request.

The applicant, however, insisted that her request be granted.

In November 1987 the applicant asked a private company specialising in registering names and addresses to sell her addresses of persons named "X." in order to enable her to obtain their consent to her change of surname.

On 8 December 1987 the Patent and Registration Office recommended the applicant to annul the address order, as any established consent would not increase her chances of getting her request approved. The applicant refused to do so, but nevertheless did not receive any addresses.

On 23 February 1988 the Patent and Registration Office rejected the applicant's request under Section 12 para. 1 and Section 13 para. 1 of the 1982 Name Act (namnlag 1982:670). The Office referred to its above-mentioned practice and found that, although it had been shown that the surname "X." had been used by an ancestor born in 1734, it had not been shown that the following ancestor had used that name. The Office noted that this ancestor had been given the surname "Z.", which since then had remained the surname on the applicant's father's side. As regards the proposed surname "Y." the Office referred to an expert opinion submitted by its philological adviser, finding that the name was too divergent from the Swedish form for surnames to be approved.

Following the applicant's appeal the Court of Patent Appeals (patentbesvärsrätten) on 12 January 1989 upheld the decision. Having regard to the considerable length of time which had passed since the name "X." had been used in the applicant's family the Court found no particular reasons under Section 14 para. 2 of the Name Act in view of which the change of surname should be approved.

As regards the name "Y." the Court (by 2 votes to 1) referred to the reasons stated in the Patent and Registration Office's decision.

The applicant subsequently sought leave to appeal to the Supreme Administrative Court (regeringsrätten). This was refused on 11 October 1989.

Relevant domestic law

Under Section 10 para. 2 of the Name Act a person may, either during a marriage or following its dissolution, take back the surname that he or she carried before marrying. Such a change is to be registered following a declaration to the competent authority.

Under Section 12 para. 1 a new surname shall not be allowed if, having regard to its form, pronunciation or spelling, it is not considered appropriate as a surname in Sweden.

Under Section 13 para. 1 sub-para. 1 a surname shall not be accepted if it may easily be confounded with a surname which someone else is using or has a right to use under Swedish law.

Under Section 14 para. 2 exemptions from the above provisions may be made provided there are particular reasons.

COMPLAINTS

The applicant complains that the refusal of her request for a change of surname constitutes a violation of her right to respect for her private and family life. Genealogical investigations show that she is linked to the family of "X." and "X.". She submits that her maiden

name "Z." was only a name used by the Armed Forces according to a practice in force from 1752 to 1809. However, although the Armed Forces ignored her ancestors' real surname, that name continued to exist in the parochial register up to around 1850, when an ancestor emigrated to Finland, where, due to a misunderstanding, his name was registered as "Z."

She further complains that she was refused access to the names and addresses of persons carrying the names "X." or "X.", although these were registered by a private company, and despite the practice that persons requesting a change of surname could buy the relevant addresses of persons using the requested name in order to obtain their consent to the change.

The applicant invokes Articles 8 and 10 of the Convention.

THE LAW

The applicant complains that the refusal of her request for a change of surname constitutes a violation of her right to respect for her private and family life. She further complains that the authorities refused her access to the names and addresses of persons carrying the names "X." or "X.", although these were registered by a private company, the practice being that persons requesting a change of surname could buy the relevant addresses of persons using the requested name in order to obtain their consent to the change. She invokes Articles 8 and 10 (Art. 8, 10) of the Convention.

(a) The Commission has first considered the application under Article 8 (Art. 8) of the Convention, which reads:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission must first decide whether the refusal to allow the applicant to change her surname to "X." or "X." amounts to an interference with her right to respect for her private and family life as enshrined in para. 1 of Article 8 (Art. 8-1).

The Commission observes that the applicant's present surname is that of her former husband, whom she divorced in 1946. However, her request to have this name changed was not lodged until 1987. The Commission further notes that she could have availed herself of the possibility under Section 10 para. 2 of the Name Act to take back her maiden name. This possibility is still open. The reason for her request appears to have been an attempt to manifest a closer link with her ancestors, as she did not refer to any particular inconvenience caused by her present name.

In these particular circumstances, the Commission cannot find that there has been a lack of respect for the applicant's private and family life. Thus, there has been no interference with the applicant's rights under para. 1 of Article 8 (Art. 8-1).

It follows that this part of the application is incompatible

ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

(b) The Commission has further considered the application under Article 10 (Art. 10) of the Convention, which reads:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

It appears from the file that the Patent and Registration Office had learnt of the applicant's address order from the company selling the addresses. By a letter of 8 December 1987 the Office advised the applicant to cancel her order, as any consent obtained from persons named "X." would not have increased her chances to have her request in this respect granted. She was further informed that the order going to be costly. Although the applicant never received any addresses there is no indication that this was caused by obstruction on the part of the Patent and Registration Office.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)