AS TO THE ADMISSIBILITY OF

Application No. 18806/91
by K.B.
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 1 September 1993, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO

Mr. K. ROGGE, Secretary to the Chamber

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

Having regard to the application introduced on 28 May 1991 by K.B. against the Netherlands and registered on 16 September 1991 under file No. 18806/91;

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 Dutch national, born in 1964 and currently residing at Rotterdam, the Netherlands. Before the Commission he is represented by Mrs. E.K.E. van Herk, a lawyer practising in Amsterdam.

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

On 16 September 1988 the applicant requested the Minister of Justice to be allowed to add his mother's maiden name to his family name by placing it after his father's name. The reason for this request was his mother's serious illness and the applicant's wish to express the special bond between him and his mother, who had stimulated him in many respects. The applicant's mother died on 7 March 1989.

On 15 March 1989 the Deputy Minister rejected the request. The Deputy Minister noted that, in respect of requests to change family names, certain directives had to be followed.

The Deputy Minister considered that the applicant's request did not fall into one of the categories contained in the applicable directives and did not find that the applicant's personal interest in having his name changed was of such a nature that his request should nevertheless be granted.

On 7 April 1989 the applicant filed an appeal under the Administrative Decisions Appeals Act (Wet Administratieve Rechtspraak Overheidsbeschikkingen) against the decision of 15 March 1989 with the Judicial Division of the Council of State (Afdeling Rechtspraak van de Raad van State).

The Judicial Division rejected the applicant's appeal on 5 December 1990. The Judicial Division noted that the parties did not dispute the fact that the applicant's request fell outside the possibilities contained in the applicable directives, but that the parties' dispute concerned the question whether or not the present case constituted a special situation in which the Deputy Minister should nevertheless have granted the applicant's request.

The Judicial Division, having regard to the necessity to prevent arbitrariness, to maintain the required stability in the rules governing family names and to prevent double family names, approved the Deputy Minister's reticent approach in regard to requests to change names falling outside the scope of the directives. The Judicial Division rejected the applicant's argument under Articles 8 and 14 of the Convention, considering that Article 8 does not contain rules governing family names. Finally, noting that it is open to the applicant to carry his mother's name in society, the Judicial Division held that no circumstances had become apparent on the basis of which the Deputy Minister should have deviated from his policy in this field.

RELEVANT DOMESTIC LAW

Section 7 para. 1 of the Civil Code (Burgerlijk Wetboek) Book 1, insofar as relevant, reads:

<Dutch>

> "1. De geslachtsnaam van een persoon kan op zijn verzoek (...) door de Koning worden gewijzigd.
> (...)
> 5. Bij algemene maatregel van bestuur worden regelen gesteld betreffende de wijze van indiening en behandeling van verzoeken als in het eerste (...) lid bedoeld (...)."

<Translation>

> "1. The family name of a person can, at his request, be altered by the King.
> (...)
> 5. Rules on the form of introduction and examination of requests within the meaning of the first paragraph shall be set by Order in Council."

By Order in Council of 9 December 1969 on the rules concerning requests to alter or to establish family names (Regelen betreffende verzoeken tot naamswijziging en tot naamsvaststelling) the Minister of Justice is entrusted with the preparatory examination of requests to change a family name. This Order in Council also authorises the Minister of Justice to reject such a request when he considers it cannot be granted.

By Ministerial Order of 3 December 1976 the Deputy Minister of Justice issued directives for changing family names (Richtlijnen voor geslachtsnaamswijziging 1976). These directives were lastly amended by Ministerial Order of 24 April 1980.

According to these directives a request to add a family name to an existing family name can only be granted where:

a. an applicant demonstrates that the name to be added forms a part of the family name carried by his ancestors at the

time of the introduction of the Register of births, deaths and marriages (1810 - 1838) and which name has since then not fallen into disuse; or,

b. the name to be added concerns the mother's maiden name and this name is extinct or threatened with extinction. In these cases the name to be added will be placed before the person's own family name.

COMPLAINTS

The applicant complains that the refusal of the Dutch authorities to grant his request for permission to add his mother's maiden name to his family name violated his right to respect for his private and family life within the meaning of Article 8 of the Convention. The applicant further complains under Article 8 in conjunction with Article 14 of the Convention that the application of the Dutch rules on family names constitutes a discriminatory difference in treatment between men and women, since, apart from exceptions on a very restricted basis, individuals are not free to choose to bear their mother's maiden name as their family name or to add their mother's maiden name to their own family name.

THE LAW

The applicant complains under Article 8 (Art. 8) of the Convention that the refusal of the Dutch authorities to grant his request for permission to add his mother's maiden name to his family name violated his right to respect for his private and family life. He further complains under Article 8 in conjunction with Article 14 (Art. 8+14) of the Convention that the application of the Dutch rules on family names discriminates against women, since, as a rule, individuals are not free to choose their mother's maiden name as their family name or to add their mother's maiden name to their own family name.

Article 8 (Art. 8) of the Convention, insofar as relevant, reads as follows:

> "1. Everyone has the right to respect for his private and family life (...).
>
> 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 (...) for the prevention of disorder (...)."

Article 14 (Art. 14) of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that the right to respect for private life as enshrined by Article 8 para. 1 (Art. 8-1) of the Convention ensures a sphere within which everyone can freely pursue the development and fulfilment of the personality. The right to develop and fulfil one's personality necessarily comprises the right to identity and, therefore, to a name (S. Burghartz and A. Schnyder Burghartz v. Switzerland, Comm. Report 21.10.92, para. 47).

The Commission, therefore, considers that Article 8 (Art. 8) of

the Convention applies to the present case.

The Commission also recalls that the notion of "respect" enshrined in Article 8 (Art. 8) is not clear cut. This is the case especially where the positive obligations implicit in that concept are concerned. Its requirements will vary considerably from case to case according to the practices followed and the situations in the Contracting States. In determining whether such an obligation exists regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual (cf. Eur. Court H.R., B. v. France judgment of 25 March 1992, Series A no. 232-C, p. 47, para. 44).

The Commission notes that the applicant's request to add his mother's maiden name after his family name was refused, as his request did not meet the conditions laid down in the applicable directives.

The Commission further notes that the Netherlands policy concerning changes in family names is based on the necessity to prevent arbitrariness, to maintain the required stability in the rules governing family names and to prevent double family names.

The Commission accepts that there may be exceptional cases where the carrying of a particular name creates such suffering or practical difficulties that the right under Article 8 (Art. 8) of the Convention is affected. There are, however, good reasons for restrictions in this area, and a right to change one's surname cannot, in principle, be considered to be included in the right to respect for private life, as protected by Article 8 (Art. 8).

Having regard to the fact that the applicant does not allege that his present family name is causing him any inconveniences (cf. on this issue No. 16878/90, Dec. 29.6.92, to be published in D.R., and No. 18131/91, Dec. 29.6.92, unpublished) and that he is at liberty to carry his mother's maiden name in society, the Commission is of the opinion that the application of the rules established in the directives on changing family names in the applicant's case does not amount to a lack of respect for his private life within the meaning of Article 8 (Art. 8) of the Convention.

Insofar as the applicant relies on Article 14 (Art. 14) of the Convention, an examination of his complaint does not reveal any appearance of discrimination against him contrary to this Article.

It follows that the application is 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 Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)