AS TO THE ADMISSIBILITY OF

Application No. 26272/95
by Felicja SIJKA
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 10 September 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

Ms. M.-T. SCHOEPFER, 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 7 July 1994 by Felicja SIJKA against Poland and registered on 24 January 1995 under file No. 26272/95;

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, a Polish citizen born in 1914, is a pensioner residing in Szczecinek.

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

Particular circumstances of the case

On 8 May 1993 the applicant requested the Szczecinek District Office (Urz*d Rejonowy) to permit her to change her surname to "Krüger-Cylwich". She submitted that she wished to give up her Polish citizenship and acquire a German one. She contended that she had been continuously persecuted and harassed by the authorities since the Second World War because of her political convictions and allegiances. She submitted in particular that in the light of her German nationality she was entitled to use a German name and that a refusal to do so would amount to a violation of her national identity. She submitted that the name "Krüger" was a name of her maternal family who had been loyal

Polish citizens and had fought during the Second World War for the independence of Poland. The name "Cylwich" was her late husband's name and she had been known under that name in Szczecinek from 1946. She had changed that name to "Sijka" after her marriage. She further argued that a refusal would be in breach of the European Convention of Human Rights.

The following documents were enclosed with her request: the applicant's mother's birth certificate giving her name as "Emilie Krüger", the applicant's mother's marriage certificate and a copy of the applicant's identity card issued in 1966 for "Felicja Sijka" and in which the birth of her daughter G. Cylwich in 1952 had been registered.

On 11 June 1993 the Director of the Szczecinek District Office (Kierownik Urz*du Rejonowego) refused to comply with the applicant's request. In doing so he had regard to the principle of stability of names and surnames set forth in the Change of Names and Surnames Act. He further considered that this Act contained a list of criteria to be complied with in order for a surname to be changed. The applicant's request did not fall into the ambit of any of those criteria. Her name "Sijka" which, as it transpired from the applicant's marriage certificate, she had taken in 1966, was neither undignified nor had a non-Polish character. It had not been established that she had ever used the name "Cylwich" as she had not shown that she had married E. Cylwich. She had not had anything in common ("nie posiada ona nic wspólnego") with the name "Krüger" as it had only been her mother's maiden name. Thus, she had not shown that she complied with another requirement under the Act, i.e. that she had used those names for a long time. The entry into force of the Polish-German Treaty was of no relevance to the applicant's case as it only guaranteed that the persons belonging to a German minority were entitled to use their, previously polonised, surnames in their German form, whereas the applicant had not shown that she had ever used the name "Krüger". The authority went on to state that the applicant's request seemed to be made under the influence of her son, who had previously unsuccessfully requested to have his name changed to "Krüger".

The applicant lodged an appeal, arguing, inter alia, that the Polish-German Treaty on Cooperation of 1991 created a priority of international law over domestic law and in its Article 3 guaranteed a right to use names and surnames of the minority members in the national form. She concluded that this provision superseded the provisions of the Change of Names and Surnames Act. She further submitted that she had used the name "Cylwich" from 1946. She relied in this respect on her son's birth certificate of 1947 in which her name "Felicja Cylwich" had been entered.

On 3 August 1993 the Koszalin Governor (Wojewoda) upheld the attacked decision, considering that the arguments relied on by the applicant in her appeal did not suffice to set the decision aside. In the applicant's case the legal requirements of a change of name or surname provided for in Article 2 of the Change of Names and Surnames Act were not complied with. Consequently, the decision was in accordance with the law.

The applicant lodged an appeal against this decision. She submitted that the authorities lacked objectivity and that the decision was to her detriment. She further submitted that this decision was not in conformity with the Polish-German Treaty on Cooperation of 1991. She argued that the decision was in breach of the Change of Names and Surnames Act, and in particular in breach of its Article 3 para. 2.

On 12 January 1994 the Supreme Administrative Court (Naczelny S*d Administracyjny) dismissed the applicant's appeal. The Court considered that the Change of Names and Surnames Act set forth a principle of stability of surnames and allowed for a change only for

reasons set out therein. These reasons provided for in Article 2 were as follows: the surname was ridiculous or had an undignified or a non-Polish character or form of a name. The surname could further be changed if the applicant wished to take a name which he or she had de facto used for a long time. In the applicant's case her name "Sijka" did not satisfy the first set of those criteria. The Court established that the applicant had concluded a religious marriage with her first husband and after his death had changed her name from "Cylwich" to "Gurowska". On her marriage in 1966 she changed her name to "Sijka". Thus the change from "Cylwich" to "Gurowska" had been effected on the applicant's own will and it transpired therefrom that she had not used the former name for a long time. As regards the name "Krüger", the applicant had not contended that she had ever used it. The mere fact that it was her maternal family's name did not suffice to comply with her request. As to the applicant's reference to Article 3 para. 2 of the Act, it was incorrect as it concerned only a protection afforded under the Act to historical names. Likewise, the reference in the applicant's appeal to the Polish-German Treaty did not have a bearing on the circumstances of the case as it only guaranteed that the persons belonging to a German minority in Poland were entitled to use their surnames in their German form, but did not apply to the persons wishing to change their surnames altogether as these issues were subject to regulation contained in the Change of Names and Surnames Act.

On 13 June 1996 the Szczecinek District Court (S*d Rejonowy) ordered the applicant's eviction from her apartment as she had not been paying rent from February 1995.

Relevant domestic law

The provisions governing the change of names and surnames are set out in the Change of Names and Surnames Act. Article 1 of this Act states that a name or surname of a Polish citizen can be changed to another on his request in the circumstances specified in the Act. Under Article 2 such a request shall be allowed if there are important reasons therefor, these reasons being in particular that the surname to be changed is ridiculous or has an undignified character or has a non-Polish character, or form of a name, or if the applicant wishes to change his or her name to one which he or she had de facto used for a long time.

COMPLAINTS

The applicant complains under Article 6 of the Convention that she did not have a fair hearing as the authorities in deciding her case lacked impartiality and took a wrong decision, disregarding all her arguments. In particular, they failed to take into consideration that one of the names was her mother's maiden name. They further refused to take any evidence which would show that she had used the other name "Cylwich" and had been known under that name.

The applicant further complains that she and her family are being persecuted and harassed for political reasons. She finally complains about the eviction judgment.

THE LAW

The applicant complains that she did not have a fair hearing as the authorities in deciding her case lacked impartiality and took a wrong decision in that she was refused permission to change her surname. The applicant invokes Article 6 (Art. 6) of the Convention.

The Commission recalls that the Convention does not contain any

explicit reference to names. Nonetheless, since it constitutes a means of personal identification and a link to a family, an individual's name does concern his or her private and family life (Burghartz v. Switzerland judgment of 22 February 1994, Series A no. 280-B, p. 28, para. 24). The subject matter of the case thus falls within the ambit of Article 8 (Art. 8) of the Convention. The Commission has accordingly examined this complaint under this Article.

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

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

The Commission recalls that while a refusal to change one's name cannot necessarily be considered an interference in the exercise of the right to respect for private life, there may in addition be positive obligations inherent in an effective respect for private life. The boundaries between the State's positive and negative obligations under Article 8 (Art. 8) do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (Eur. Court HR, Keegan v. Ireland judgment of 26 May 1994, Series A no. 290. p. 19, para. 49). There is little common ground between the domestic systems as to the conditions on which a change of name may be legally effected. Consequently, the States Parties to the Convention enjoy a wide margin of appreciation in this domain (see Eur. Court HR, Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 20, para. 55; Stjerna v. Finland judgment of 25 November 1994, Series A no. 299-B, p. 61, para. 39). The Commission's task is not to substitute itself for the competent Polish authorities in determining the most appropriate policy for regulating changes of surnames, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation.

In the present case it is to be noted that in the applicant's submissions there is no reference to the fact that she has suffered any inconvenience because of her name. She only wishes to get rid of it as she considers that she is being persecuted by the authorities.

As to the applicant's attachment to the proposed name "Krüger", the Commission considers that it can be argued that the applicant could have legitimately wished to manifest thereby a link to her family as this had been her mother's maiden name. However, the Commission observes that the only reason for which the applicant wished to use the name "Cylwich" was that she contended that she had been known under this name in her town from the time of her marriage. It is true that the applicant submits two declarations of her neighbours who state that they knew her under the name "Cylwich" as her name acquired as a result of the 1966 marriage was not accepted by the applicant's environment. However, it does not transpire from the applicant's submissions that she had submitted these documents to the authorities deciding her case as there is no reference thereto in the documents relating to the proceedings concerned. The Commission does not find it established that the applicant had used the name "Cylwich". It is not in dispute that she had never used the name "Krüger-Cylwich".

The Commission further considers that the decisions concerned do not seem to be arbitrary. The fact that the authorities relied on the principle of stability as set out in the Change of Names and Surnames Act as regards change of surnames does not confer such character on them as they carefully weighed the applicant's arguments adduced in support of her request in the light of applicable law.

In these circumstances, the Commission finds that the refusal to let the applicant change her name from "Sijka" to "Krüger-Cylwich" does

not constitute a lack of respect for her private life within the meaning of Article 8 (Art. 8) of the Convention.

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

Insofar as the applicant complains that she did not have a fair hearing in her case, the Commission finds no indication that contrary to the requirements of Article 6 para. 1 (Art. 6-1) of the Convention the applicant did not have an opprtunity to put forward her arguments or that the Court arbitrarily assessed evidence or that the proceedings were otherwise unfair. As regards the alleged lack of impartiality of the authorities concerned, the applicant does not rely on any arguments other than the outcome of the proceedings. 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.

Insofar as the applicant complains about being allegedly persecuted by the authorities, the Commission observes that she has not adduced any evidence in this respect. It follows that this complaint is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

As regards finally the applicant's complaint concerning the eviction judgment, the Commission is not required to decide whether or not it discloses any appearance of a violation of the Convention as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with a matter after all domestic remedies have been exhausted". In the present case, the applicant failed to lodge an appeal against the impugned judgment with a higher court.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber