EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 16213/90

Susanna BURGHARTZ and Albert SCHNYDER BURGHARTZ

against

SWITZERLAND

REPORT OF THE COMMISSION

(adopted on 21 October 1992)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The first applicant, born in 1956, has dual Swiss and German nationality. The second applicant, born in 1956, is a Swiss citizen. The applicants, a married couple, are both historians residing in Basel in Switzerland. Before the Commission the applicants are represented by Ms. E. Freivogel, a lawyer practising at Binningen in Switzerland.

3. The application is directed against Switzerland whose Government are represented by their Deputy Agent, Mr. Ph. Boillat, Head of the European law and International Affairs Section of the Federal Office of Justice.

4. The applicants complain that the second applicant, who has agreed to use the wife's maiden name as the family name, is denied the right to put his previous name before the family name. The applicants submit that this amounts to discrimination based on sex since a woman who after marriage has the husband's name as the family name may put her previous name before the family name. The applicants rely on Article 8 of the Convention and on Article 14 of the Convention taken together with Article 8.

B. The proceedings

5. The application was introduced on 26 January 1990 and registered on 26 February 1990.

6. On 8 April 1991 the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits of the application.

7. The Government's observations were received by letter dated 20 June 1991. The applicants' observations in reply are dated 30 September 1991.

8. On 19 February 1992 the Commission declared the application admissible.

9. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

10. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
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

11. The text of this Report was adopted on 21 October 1992 and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

12. The purpose of the Report, pursuant to Article 31 of the Convention, is:

i) to establish the facts, and

ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

13. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

14. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

1. Proceedings before the cantonal authorities

15. The applicants have resided in Basel since 1975. Before their marriage in 1984, the first applicant's name was Susanna Maria Simone Burghartz; the second applicant's name was Albert Johann Schnyder.

16. In 1984 the applicants married in the Federal Republic of Germany. In accordance with German law, the wife's name was chosen as the family name. The second applicant declared in addition that he would put his own name before the family name. After the marriage, therefore, the first applicant bore in the Federal Republic of Germany the name Susanna Burghartz, the second applicant the name Albert Schnyder Burghartz.

17. When the Swiss Civil Status Registry (Zivilstandsamt) recorded as the applicants' family name Schnyder, the applicants requested the Council of State (Regierungsrat) of the Canton of Basel-Landschaft to

be allowed to adopt Burghartz as the family name and Schnyder Burghartz as the second applicant's name. This request was refused by the Council of State on 6 November 1984.

18. On 5 October 1984 the Swiss Civil Code (Zivilgesetzbuch) was amended with regard to the effects of marriage, inter alia as regards the family name of a married couple. The amendment entered into force on 1 January 1988.

19. On 26 October 1988 the applicants requested the Department of Justice (Justizdepartement) of the Canton of Basel-Stadt to be allowed to adopt as the family name Burghartz and to permit the second applicant to put his birth name before the family name, i.e. Schnyder Burghartz.

20. On 12 December 1988 the Department of Justice refused this request. It found that the applicants had not indicated any serious disadvantages deriving from the family name Schnyder. Moreover, the Swiss Civil Code did not contain transitional provisions with regard to Section 30 para. 2 of the Code (see Relevant domestic law and practice). Thus, the applicants could not on the basis of this provision, after their marriage, request the adoption of the wife's name as the family name. On the other hand, according to the text of Section 160 para. 2 of the Civil Code the possibility for the wife to put her name before the husband's name was clearly limited to the wife, and the husband had no corresponding right.

2. Judgment of the Federal Court of 8 June 1989

21. The applicants then filed an appeal (Berufung) with the Federal Court (Bundesgericht). In their appeal they complained in particular of a violation of Sections 30 and 160 of the Civil Code as well as Section 8a of the Final Provisions (Schlusstitel) to the Civil Code. The applicants also invoked Section 4 para. 2 of the Federal Constitution.

22. The Federal Court gave its decision on 8 June 1989; the decision was served on the applicants on 27 July 1989.

23. The Federal Court upheld the appeal insofar as the applicants complained that they were not allowed to adopt the wife's maiden name as the family name.

24. Thus, the Court found on the one hand that Section 30 para. 2 of the Civil Code was inapplicable as it clearly only referred to fiancés, not to married persons. On the other hand the Court considered that in the present case there were important reasons within the meaning of Section 30 para. 1 of the Swiss Civil Code. The Court noted inter alia the proximity of Basel to the Federal Republic of Germany and the particular situation of the applicants, namely their age and professional sphere in the light of which the decision of the Department of Justice could not be considered satisfactory. The Court therefore determined that the applicants were henceforth permitted to adopt Burghartz as the family name.

25. However, the Federal Court dismissed the appeal insofar as the applicants requested, with reference to Section 160 para. 2 of the Civil Code, that the second applicant be allowed to put his former name before the family name, i.e. Schnyder Burghartz.

26. The Court recalled the preparatory materials of Section 160 para. 2 of the Civil Code. It noted that from the outset a free choice between the husband's and the wife's name had been ruled out as it would have run against tradition while still forcing one spouse to give up his or her name. Parliament also did not accept the free choice of the wife to take on the husband's name, or to keep her own name, as this would have abandoned the unity of the name in the family. The

purpose of the present Article 30 para. 2 of the Civil Code was to facilitate the possibility for a couple to employ the wife's name as the family name. Parliament furthermore intentionally reserved to women the right to put the previous name before the family name.

27. The decision of the Federal Court continues:

<Translation>

> "The meaning, purpose and also the history of Section 160 para. 2 of the Civil Code all militate against an interpretation running counter to the text and thus against its implicit application to the husband who agreed to adopt as the family name the woman's name. It is understandable that the applicants invoke the principle of equality and argue in favour of an interpretation conforming with the Constitution ... In addition, it can hardly be overlooked that the man, who loses his original name due to the choice according to Section 30 para. 2 of the Civil Code or the change according to Section 30 para. 1 of the Civil Code, will also be interested, for reasons connected with his right of personality, in having his previous name put first. This can nevertheless not alter the fact that the original view expressed in the Council of State, according to which Section 160 para. 2 should be drafted independently of the sex, was not taken up despite intensive discussion in both Chambers. Thus, seeing that the legislator, by adopting Section 160 para. 2 in its present wording, has in the end clearly decided in favour of a solution specifically making a distinction on the basis of sex, an interpretation relying primarily on Article 4 para. 2 of the Federal Constitution is excluded."

<German>

> "Sowohl Sinn und Zweck als auch die Entstehungsgeschichte des Art. 160 Abs. 2 ZGB sprechen gegen eine dem Wortlaut zuwiderlaufende Auslegung und somit gegen dessen sinngemässe Anwendung auf den Mann, welcher der Wahl des Frauennamens zum Familiennamen zugestimmt hat. Zwar ist verständlich, dass sich die Berufungskläger auf den Grundsatz der Rechtsgleichheit berufen und einer verfassungskonformen Auslegung das Wort reden ... Ueberdies lässt sich kaum übersehen, dass auch der Mann, der seinen angestammten Namen durch die Wahl gemäss Art. 30 Abs. 2 ZGB oder die Abänderung gemäss Art. 30 Abs. 1 ZGB verliert, ebenfalls aus Gründen des Persönlichkeitsrechts am Voranstellen seines bisherigen Namens interessiert ist. Das vermag aber daran nichts zu ändern, dass die ursprünglich im Ständerat vertretene Auffassung, wonach Art. 160 Abs. 2 ZGB geschlechtsunabhängig ausgestaltet werden sollte, trotz eingehender Diskussion in beiden Räten nicht mehr aufgegriffen worden ist. Hat sich der Gesetzgeber mit der Aufnahme des Art. 160 Abs. 2 ZGB in seiner heutigen Formulierung letzlich eindeutig für eine geschlechtsspezifische Lösung entschieden, kommt eine in erster Linie von Art. 4 Abs. 2 BV ausgehende Auslegung nicht in Frage."

28. The Court concluded that, even if this part of the appeal was to be dismissed, the applicant could in practice add his own name as an "alliance name" (Allianzname, see below para. 31), or privately put his name before the family name.

29. According to the applicants' submissions, the second applicant's original name no longer appears in many official documents and registers. His university also refuses to issue the certificate of his doctoral thesis with his previous name put before his family name. Thus, the connection of identity to his previous publications is no longer maintained.

B. Relevant domestic law and practice

30. Section 4 para. 2 of the Swiss Federal Constitution states:

<Translation>

> "Men and women have equal rights. The law ensures their equality particularly in the family, in education and at work. Men and women are entitled to equal pay for equal work."

<German>

> "Mann und Frau sind gleichberechtigt. Das Gesetz sorgt für ihre Gleichstellung, vor allem in Familie, Ausbildung und Arbeit. Mann und Frau haben Anspruch auf gleichen Lohn für gleichwertige Arbeit."

31. Before the Swiss Civil Code was revised, it was, and continues to be, an established custom in Switzerland for a married couple to be able to employ an "alliance name" (Allianzname). Thus, if the husband's name constitutes the family name, the wife may add her name with a hyphen (e.g. before marriage Mr. Meier und Miss Müller; after marriage Mr. and Mrs. Meier-Müller). The Federal Court has confirmed this custom, while nevertheless stating that "ce nom composé ne peut pas être considéré comme le nom de famille légal" (see Arrêts du Tribunal Fédéral <ATF> 110 II 99).

32. According to the revised Swiss Civil Code, if the husband's name constitutes the family name, the wife may put her name before the family name (e.g. before marriage Mr. Meier and Miss Müller; after marriage Mr. Meier and Mrs. Müller Meier). The relevant provision is Section 160 which states:

<Translation>

> "1. The husband's name shall be the spouses' family name.
>
> 2. However, the bride may declare before the civil registrar that she wishes to have her previous name put before the family name."

<German>

> "1. Der Name des Ehemannes ist der Familienname der Ehegatten.
>
> 2. Die Braut kann jedoch gegenüber dem Zivilstandsbeamten erklären, sie wolle ihren bisherigen Namen dem Familiennamen voranstellen."

33. The revised Civil Code also provides for the possibility at issue in the present case under certain conditions to choose the name of the wife and not of the husband as the family name (e.g. before marriage Mr. Meier and Miss Müller; after marriage Mr. and Mrs. Müller) and generally to ask for a change of name. The relevant provision is Section 30 which states:

<Translation>

> "1. The Government of the Canton of residence may permit a person to change his or her name, if there are important reasons.
>
> 2. The request of the fiancés to have as from their marriage the wife's name as the family name, must be permitted if there are reasons commanding respect."

<German>

> "1. Die Regierung des Wohnsitzkantons kann einer Person die

Änderung des Namens bewilligen, wenn wichtige Gründe vorliegen.

2. Das Gesuch der Brautleute, von der Trauung an den Namen der Ehefrau als Familiennamen zu führen, ist zu bewilligen, wenn achtenswerte Gründe vorliegen."

34. Section 8a of the Final Provisions (Schlusstitel) to the Civil Code provides that a woman who married before revision of the Civil Code may, within a period of one year after the new law enters into force, declare before the civil registrar that she will put the name which she had before marriage before the family name.

35. Children bear the parents' family name (Section 270 para. 1 of the Civil Code). If the husband's name constitutes the family name, and the wife puts her name before the family name, the child's name will not be affected. If the wife's name constitutes the family name, this will become the child's name.

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

36. The Commission has declared admissible the applicants' complaints that the second applicant, who uses the wife's maiden name as the family name, is denied the right to put his previous name before the family name; and that this constitutes discrimination based on sex since a woman who after marriage has the husband's name as the family name may put her previous name before the family name.

B. Points at issue

37. Accordingly, the issues to be determined are:

- whether there has been a violation of Article 14 of the Convention taken together with Article 8 (Art. 14+8); and

- whether there has been a violation of Article 8 (Art. 8) of the Convention taken alone.

C. Article 14 of the Convention taken together with Article 8 (Art. 14+8)

38. The Commission finds that the application essentially concerns a complaint of difference in treatment based on sex and thus falls to be examined under Article 14 of the Convention taken together with Article 8 (Art. 14+8).

39. Article 8 (Art. 8) of the Convention states:

"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."

40. Article 14 (Art. 14) of the Convention states:

"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."

41. The first question to be considered is whether Article 8 (Art. 8) of the Convention is applicable in the present case.

42. The applicants submit that the right to respect for private life within the meaning of Article 8 (Art. 8) comprises the use of a person's name. In the case of the second applicant the function of identity which his name provided has been lost. The fact that the second applicant agreed to the first applicant's name as the family name does not mean that he renounced all rights. In fact, he only agreed to accept that family name if he could put his own name first. In the applicants' view it is insufficient if the second applicant can privately - for instance on his letter box - use the name he wishes, since in the professional and public sphere the legal name must be employed.

43. The Government contend that Article 8 (Art. 8) is not applicable to the present case and refer to the Commission's case-law (see No. 8042/77, Hagmann-Hüsler v. Switzerland, Dec. 15.12.77, D.R. 12 p. 202). Thus, the Government recall the Federal Court's decision of 8 June 1989 according to which the second applicant is free in his daily life, even in his identity papers, to use an "alliance name" or privately to put his name before the family name. The Government see a confirmation hereof in the fact that the second applicant in his application to the Commission has used the name Schnyder Burghartz.

44. The Commission recalls that in two cases concerning the use of a name it found no violation of Article 8 (Art. 8). The Hagmann-Hüsler case referred to by the Government concerned a parliamentary candidate's unsuccessful request to run for parliament under the name known to the public, namely her maiden name. The Commission was satisfied that the applicant had a "reasonable possibility of precise identification available to her" since she could add her maiden name after the family name as an "alliance name" (see loc. cit. p. 205).

45. In another case the applicant, who had the name of her divorced husband, was refused a name used by ascendants two hundred years ago. The Commission saw no lack of respect for, and therefore no interference with, the rights under Article 8 para. 1 (Art. 8-1) of the Convention since the applicant had employed her former husband's name for over 20 years and had moreover not availed herself of the possibility of taking back her maiden name (see No. 16878/90, Boij v. Sweden, Dec. 29.6.1992, to be published in D.R.).

46. Moreover, the Commission has recently declared admissible, as raising complex questions of law and fact, an application concerning the refusal of permission to change a surname (No. 18131/91, S. v. Finland, Dec. 29.6.92).

47. The Commission considers that the right to respect for private life as enshrined in 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.

48. In the present case the Government refer to a practice in Switzerland, enabling the second applicant to use an "alliance name", or informally in daily life to put his or her own name before the family name.

49. The Commission observes that the Federal Court itself drew a distinction between the practice of using the "alliance name" and the relevance of a formal legal family name (see above para. 31). The Swiss Parliament also regarded such a practice as insufficient. Thus, it found it necessary formally to enact provisions determining the husband's name or, under certain conditions, the wife's name as the

family name; and enabling the wife to put her name before the family name (Sections 160 para. 2 and 30 para. 2 of the Civil Code, respectively).

50. Furthermore, when the applicants filed a request formally to be permitted to put the second applicant's name before the family name, the authorities did not treat the request as unnecessary. Rather, the request was dealt with thoroughly and at different levels, though once the Federal Court had dismissed the request, it pointed out that the applicant could informally use the names he wished.

51. In the Commission's opinion, Article 8 (Art. 8) of the Convention is therefore applicable in the present case.

52. The Commission must now examine whether there has been a violation of Article 14 taken together with Article 8 (Art. 14+8) of the Convention.

53. The applicants submit that if the husband's name is employed as the family name, the wife may put her own name before the family name. However, if the wife's name is employed as the family name, the husband is not granted this possibility. They complain of sex discrimination in respect of which there is no objective justification.

54. The Government contend that the legislation complained of was neither conceived nor formulated to ensure the equality of sexes but aims at manifesting the unity of the family. The Government describe the preparatory materials leading to the legislation concerned, as explained by the Federal Court in its decision (see above para. 26). It transpires therefrom that parliament did not want a free choice of names, as this would have abandoned the principle of the unity of the family name. The Government submit that the unity of the family name in turn manifests the unity of the family.

55. The Government furthermore submit that the wife's right to put her name before the family name aims at alleviating the results of having a name imposed on her. This need does not exist if, as in the applicants' case, there is a voluntary change of name. The change of name is not imposed, and it appears logical to treat the two situations differently. The Government contrast the legal provisions at issue with other provisions on the relations between husband and wife which are formulated in a neutral and egalitarian manner.

56. The Commission recalls that Article 14 (Art. 14) of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 (Art. 14) does not necessarily presuppose a breach of those provisions, there is no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, p. 35 para. 71).

57. In the present case, the Commission has found that Article 8 (Art. 8) of the Convention is applicable (see above, para. 49). It follows that Article 14 (Art. 14) is also applicable. The Commission must now establish whether there was a difference of treatment.

58. The present case concerns the situation where, once a couple's family name has been determined, only one spouse may put his or her original name before the family name. Thus, if the husband's name is the family name, the wife has the possibility to put her name first. The husband may not do so, if the wife's name is chosen as the family name. Hence, a distinction is made between husband and wife in respect of the family name. The Commission, as the Swiss Federal Court before it (see above para. 27), finds that there has been a difference of

treatment on the ground of sex.

59. For the purposes of Article 14 (Art. 14) of the Convention, a difference of treatment is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law, but it is for the Convention organs to give the final ruling in this respect (see Abdulaziz judgment, loc. cit. p. 35 et seq., para. 72).

60. Moreover, the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention (see Abdulaziz judgment, loc. cit. p. 38, para. 78).

61. The Commission has first considered the Government's contention that the relevant legislation manifests the unity of the family.

62. The Commission observes that the flexibility provided today by the Swiss Civil Code, in particular the possibility for the wife to put the name before the family name, equally fails to manifest the unity of the family. In any event, if one of the spouses puts his or her name before the family name, the family name will continue to be employed by both spouses, thus in fact preserving the unity of family. Moreover, the spouses' children always bear the parents' family name (see above, para. 35)

63. The Government also submit that since the husband's name is normally imposed on the wife, it will alleviate her situation if she can put her own name first. The husband who voluntarily accepts the wife's name as the family name need not be afforded this possibility.

64. The Commission observes that under Swiss law spouses must have reasons for choosing the wife's name as the family name, and the latter will not lightly be admitted. In the present case the Department of Justice of the Canton of Basel-Stadt originally refused the applicants' request; subsequently the Federal Court saw important reasons to determine the wife's name as the family name, and also considered that the husband would have an interest in putting his name first. The Commission thus finds that, where compelling grounds lead a married couple to choose the wife's name as the family name, a difference in treatment cannot be justified by the voluntary character of the choice.

65. The Commission has noted further reasons advanced by the domestic authorities for maintaining the different treatment. Thus, it notes the Swiss legislator's intention to remain within the bounds of tradition.

66. However, in view of the importance of the advancement of the equality of sexes today in the member States of the Council of Europe, the Commission finds that tradition in itself no longer suffices to justify the difference of treatment on the ground of sex complained of in the present case.

67. Finally, the Commission notes the Federal Court's judgment of 8 June 1989. Therein, the Federal Court acknowledged a difference of treatment in the present case on account of the applicants' sex, but found that it was bound by the Swiss Constitution to apply the Swiss Civil Code and could not consider grounds of justification (see above, para. 27).

68. It follows that no objective and reasonable grounds have been shown which could justify the difference of treatment complained of.

Conclusion

69. The Commission concludes, by 18 votes to 1, that there has been a violation of Article 14 taken together with Article 8 (Art. 14+8) of the Convention.

D. Article 8 (Art. 8) of the Convention

70. Having found a violation of Article 14 of the Convention taken together with Article 8 (Art. 14+8), the Commission finds it unnecessary to examine the case under Article 8 (Art. 8) of the Convention taken alone.

Conclusion

71. The Commission concludes, by 13 votes to 6, that it is not necessary to examine the case under Article 8 (Art. 8) of the Convention taken alone.

E. Recapitulation

72. The Commission concludes, by 18 votes to 1, that there has been a violation of Article 14 taken together with Article 8 (Art. 14+8) of the Convention (see above, para. 69).

73. The Commission concludes, by 13 votes to 6, that it is not necessary to examine the case under Article 8 (Art. 8) of the Convention taken alone (see para. 71).

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)

PARTLY DISSENTING OPINION OF MM. C.A. NØRGAARD, G. JÖRUNDSSON, A.S. GÖZÜBÜYÜK, A. WEITZEL AND B. MARXER

We agree with the majority of the Commission that there has been a violation of Article 14 of the Convention taken together with Article 8. However, we disagree as to the conclusion to be drawn in respect of Article 8 of the Convention. In particular, we consider that the case raises issues which should be examined independently under Article 8 of the Convention.

Without doubt, Article 8 of the Convention was applicable (see above, paras. 41 et seq.). We also note that the applicants' request for permission to put the second applicant's name before the family name did not relate to one particular incident but concerned their situation in general.

As a result, the restrictions imposed on the applicants were sufficiently substantial to warrant the conclusion that there has been an interference with the applicants' right to respect for private life under Article 8 para. 1 of the Convention.

Next, it must be examined whether the interference satisfied the conditions of Article 8 para. 2 of the Convention.

We note that the authorities, when refusing the applicants' request to put the second applicant's name before the family name, relied on Sections 30 and 160 of the Swiss Civil Code. The interference was therefore "in accordance with the law" within the meaning of Article 8 para. 2 of the Convention.

Moreover, inasmuch as the legislation concerned aimed at securing the unity of the family, the interference may be regarded as aiming at "the prevention of disorder" within the meaning of Article 8 para. 2

of the Convention.

There remains the question whether the interference was "necessary in a democratic society" within the meaning of Article 8 para. 2 of the Convention.

The applicants submit that the Swiss authorities's refusal to let the second applicant put his name before the family name was an unjustified and disproportionate interference. The second applicant's original name no longer appears in many official documents and registers. His university also refuses to issue the certificate of his doctoral thesis with his previous name put before his family name. Thus, the connection of identity to his previous publications is no longer maintained.

The Government describe the preparatory materials leading to the legislation concerned, as explained by the Federal Court in its decision (see above para. 26). It transpires therefrom that parliament did not want a free choice of names, as this would have abandoned the principle of the unity of the family name. The Government submit that the unity of the family name in turn manifests the unity of the family.

According to the Convention organs' case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference was "necessary in a democratic society" the Convention organs will also take into account that a margin of appreciation is left to the Contracting States (see Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, p. 31 et seq., para. 67).

In the present case we consider, on the one hand, that the State has a legitimate interest in preserving the unity of the family, and in employing legislation in order to manifest such unity.

It is true that the Swiss Civil Code permits some flexibility in determining the family name, thus to some extent calling in question the principle of the unity of the family. However, we note the Swiss legislator's intention to remain within tradition and not to provide an entire freedom, in particular by not letting the husband put his name before the family name.

On the other hand, we have considered the applicants' interest in the second applicant putting his name before the family name. They claim in particular that the second applicant's name no longer appears in various documents and registers. However, we find that these difficulties, which result in the first place from the applicants' decision to adopt the first applicant's maiden name as the family name, may cause inconveniences, but they do not appear insurmountable. The same holds true in respect of the alleged difficulties concerning the second applicant's academic career. He is not prevented in future from further developing his academic reputation, and showing the connection with his previous publications, for instance by referring in his new publications to his previous name before marriage.

In our opinion, the legislation concerned, in attempting to strike a balance between the general interest in preserving the unity of the family and the interests of the individual, did not, in its application in the present case, transgress the margin of appreciation left to the Contracting States under the Convention.

We are therefore satisfied that the interference at issue may be regarded as "necessary in a democratic society" within the meaning of Article 8 of the Convention.

In our view, there has, therefore, been no violation of Article 8 of the Convention.

OPINION DISSIDENTE DE M. J.C. GEUS

Il est incontestable qu'il existe des circonstances dans lesquelles le port d'un nom ou d'un prénom déterminé peut avoir des répercussions sur la vie privée de quelqu'un (transsexualisme, nom de famille ridicule ou imprononçable etc.).

De telles circonstances sont inexistantes en l'espèce (voir avis de la Commission, par. 20). L'inconvénient mentionné au paragraphe 29 de l'avis de la Commission ne résulte en effet que du changement de nom voulu par le requérant.

Dès lors, l'article 8 de la Convention ne saurait être en cause que si le port d'un nom de famille faisait partie, par essence, de la sphère de la vie privée d'une personne.

J'estime pour ma part que le patronyme d'une personne est sa caractéristique la plus manifestement publique puisqu'elle permet son identification par tous, pouvoirs publics et personnes privées, et que l'on ne saurait prétendre que cet élément d'identification fasse partie de la sphère d'intimité d'un individu.

Si le domaine de la vie privée protégée par l'article 8 de la Convention est plus large que celui de la privacy anglo-saxonne, et permet à toute personne d'entretenir des relations avec autrui, singulièrement dans le domaine émotif, afin de développer sa propre personnalité, il faut néanmoins rappeler que la vie privée cesse là où l'individu entre en contact avec la vie publique (Commission, rapport du 12 juillet 1977, affaire Brüggeman et Scheuten, D.R., vol. 10, p. 100, par. 55 et suivants).

Enfin, la considération selon laquelle le droit de développer sa personnalité comprend nécessairement le droit à l'identité, et donc à un nom, (avis, par. 45) est exacte mais ne paraît pas démontrer que la Convention garantit à chacun de choisir librement un nom de famille et d'en changer au gré de ses états d'âme.

Aucun droit protégé n'étant en cause, l'article 14 n'a donc pas pu être violé.

APPENDIX I

HISTORY OF PROCEEDINGS

Date	Item
26 January 1990	Introduction of the application
26 February 1990	Registration of the application
Examination of Admissibility	
8 April 1991	Commission's decision to invite the Government to submit observations on the admissibility and merits of the application
20 June 1991	Government's observations
30 September 1991	Applicant's observations in reply
19 February 1992	Commission's decision to declare the application admissible
Examination of the merits	

19 February 1992) 4 July 1992)	Commission's consideration of the state of proceedings
19 October 1992	Commission's deliberations on the merits and final vote
21 October 1992	Adoption of the Report