COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF JOHANSSON v. FINLAND

(Application no. 10163/02)

JUDGMENT

STRASBOURG

6 September 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Johansson v. Finland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 7 November 2006 and on 10 July 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 10163/02) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Finnish nationals, Mr Mika Johansson and Ms Jaana Johansson ("the applicants"), on 6 February 2002.

2. The applicants, who had been granted legal aid, were represented by Mr Markku Fredman, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicants alleged that the refusal to register a name chosen for their son violated their rights under Articles 8 and 14 of the Convention.

4. By a decision of 7 November 2006, the Court declared the application admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1970 and 1967 respectively and live in Rajamäki. They have a son, born on 2 May 1999.

7. The parents chose the name "Axl Mick" for their son. On 8 July 1999 the Hyvinkää Population Registration Authority (*maistraatti, magistraten*) refused the applicants' application to register this forename under section 32b, subsections 2(1) and 3(2) of the Names Act (*nimilaki, namnlagen*; see paragraph 16 below) as this form of spelling it did not comply with Finnish name practice.

8. The applicants appealed to the then Uusimaa County Administrative Court (*lääninoikeus, länsrätten*, later replaced by the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*). They argued that the name "Axl" was common in Denmark and Norway, and it was also used in Australia and the United States. It was pronounceable in the Finnish language and was not incompatible with Finnish name practice. There were at least three persons with that name registered in the Population Information System (*väestötietojärjestelmä, befolkningsdatasystemet*) of Finland. Furthermore, they might move abroad later.

9. The State representative appointed by the State Provincial Office (*lääninhallituksen määräämä asiamies, ombudsman förordnad av länssyrelsen*) was invited to file an opinion with the County Administrative Court. In his opinion, the name should have been accepted for registration since due to increasing international contacts and co-operation, registration of a name could not be rejected on the sole basis that it was contrary to domestic name practice.

10. In its submissions to the court the Advisory Committee on Names (*nimilautakunta, nämnden för namnärenden*) considered that the proposed name was incompatible with Finnish name practice and that the applicants had not adduced adequate reasons for choosing it.

11. In response to these observations, the applicants maintained that they should be allowed to name their son "Axl" as the Population Registration Authority had registered various other forenames, such as "Minja", "Tertta", "Jonina", and "Dersim", which, in the applicants' view, were modified forenames and contrary to Finnish name practice in these forms.

12. The Helsinki Administrative Court rejected their appeal on 3 October 2000. The court referred to the Names Act, according to which a name could, although being incompatible with domestic name practice, be accepted if a person on the basis of nationality, family relations or some other special circumstance had a connection with a foreign State and the proposed forename accorded with the name practice of that State. The name

could also be accepted for other valid reasons (see paragraph 16 below). The court concluded that the arguments presented by the applicants were insufficient to allow the forename to be registered.

13. In their application to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) the applicants claimed that it was open to interpretation whether the name "Axl" was contrary to the Names Act. They contended that some priests and Population Registration Authorities would have accepted the name. Furthermore, at least three Finnish persons already had that name. In their view the name "Axl" should have been accepted for their son because it had been accepted for other persons. The name fulfilled the criteria of the Names Act in that it was clearly a male name and could not cause any harm to their son. Further, they had used the name in family circles.

14. On 20 September 2001 the Supreme Administrative Court upheld the decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The Names Act (Act No. 694/1985, as amended by Act No. 253/1991), contains provisions on names. Under section 32a a child has to be given one to three forenames upon his/her birth. The chosen name shall be declared to the Population Registration Authority or the church for registration.

16. The Finnish legislation does not contain any provision as to how a forename has to be chosen. There exist, however, almanacs on Finnish, Finnish-Swedish, Sami and orthodox names, outlining domestic name practice. A forename which is not mentioned in an almanac may also be accepted for registration if there are no general obstacles to permitting it under section 32b of the Names Act, subsections 2 and 3 of which read as follows:

> "2. In the absence of a reason mentioned in subsection 3 the following categories of names cannot be accepted for a forename:
>
> 1) a name which by virtue of its form or spelling is incompatible with domestic name practice;
>
> 2) a female name for a boy and a male name for a girl;
>
> 3) a surname...;
>
> 4) a name if it has already been given to a person's sibling.
>
> 3. A forename which does not comply with the requirements in subsection 2 may, however, be permitted:
>
> 1) on the grounds of a religious tradition;

2) if a person on the basis of nationality, family relations or some other special circumstance has a connection with a foreign State and the proposed forename accords with the practice of the said State; or

3) if some other valid reason is considered to exist."

17. The Advisory Committee on Names, subordinate to the Ministry of Justice, gives advisory opinions to the authorities and courts on the application of the Names Act. It also observes the domestic name practice and proposes legislative amendments.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The applicants complained that the refusal to register the forename "Axl" for their son amounted to a violation of their right to respect for their private and family life as guaranteed by Article 8, which reads as follows:

"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."

A. The parties' submissions

1. The applicants

19. The applicants stressed that the Convention is a living instrument which must be interpreted in the light of present-day conditions. For example, the case of *Salonen v. Finland* ((dec.) no. 27868/95, 2 July 1997), which concerned the refusal to register the name "Ainut Vain Marjaana" ("The One and Only Marjaana"), was brought before the then Commission in 1995, the year when Finland joined the European Union. Since then, both Europe and the world as a whole had changed and national borders had lost their traditional meaning. The mixing of various cultures and languages was natural and should also be officially accepted. In the light of this, the question had to be asked: how long can a Contracting State justify its national Names Act and refuse to register a forename solely on the basis that the name would not be in compliance with domestic name practice.

20. The name “Axl” was not that different from names such as “Alf”, “Ulf” or “Axel”, which were all accepted in Finland. Nor had it caused prejudice to their child. The Government certainly enjoyed a margin of appreciation. However, this margin had substantially decreased in this sphere in recent years.

21. The applicants shared the Government’s view that a child could not be given any forename. The refusal of a name should, however, be based on objective reasons and applied equally to all citizens. If exceptions were made, they should be justified. They considered that the Government had not adduced any argument as to why it had been justified to register the forename “Axl” in six other cases. They maintained that the Helsinki Population Register Authority, which they had contacted, had stated that the forename “Axl” would have been registered “without any problem”. The refusal to register officially the forename “Axl” meant that the applicants were obliged to change their son’s name.

22. Finally, the forename “Axl” would have been accepted if they had had links with a foreign State and the chosen name had accorded with the name practice of that State. This, in their view, indisputably placed persons who were Finnish citizens by birth in an unequal position *vis-à-vis* persons who were born in or had other connections with a foreign country. In their opinion a person’s national origin or family relationship was not a valid reason which, according to the Court’s case-law, could be held to be objectively and justified, given in particular the evolving nature of the Convention.

2. The Government

23. The Government considered that the present application did not disclose an interference with the applicants’ rights under Article 8 § 1. As noted by the Advisory Committee on Names in its submissions to the Administrative Court, the forename “Axel” could have been registered, and the name “Axl”, chosen by the parents, could still have been used within the family circle. In the Government’s view, any alleged prejudice caused by the one-character difference between the spellings of the official forename registered in the Population Information System and the forename used socially was insignificant.

24. As to the legitimacy of the aim pursued, the Government observed that the name practice followed in a State was closely linked to the cultural and linguistic history and identity of that State. This was especially true in a small linguistic area like Finland, where efforts to maintain a distinctive name practice were particularly justified. Moreover, the Names Act was aimed at protecting children from being given unsuitable names.

25. It was possible to deviate from domestic name practice in certain situations under the Names Act. A child could be given a forename compatible with the name practice of his or her own State of nationality,

even if this forename did not fulfil the requirements of section 32b, subsection 2 of the Names Act. In addition to nationality, family relations or another particular circumstance might also constitute a substantive connection with a foreign State. The aim of this provision was to protect minorities and it was intended to permit, for instance, the giving of forenames to immigrants who might later return to their State of nationality or wished to continue following the name practice of that State for linguistic or cultural reasons. The present applicants, however, fell outside that category. Nothing in the instant case indicated that the decision not to allow registration of the forename "Axl" was arbitrary.

26. The Government did not contest that by the time of the birth of the applicants' son, three persons with the name "Axl" had been included in the Population Information System. By September 2005 five persons had been registered with that name. One had been born abroad and had dual nationality. The others were born in Finland and were Finnish nationals. In the Government's view, the application of the Names Act in the instant case fell squarely within the State's margin of appreciation.

27. Finally, the Government submitted that name practice was evolving all the time. Thus, a name that had not been accepted might later gain acceptance and become compatible with domestic name practice within the meaning of the Names Act.

B. The Court's assessment

1. The applicability of Article 8

28. The Court ruled in the case of *Guillot v. France* (judgment of 24 October 1996, *Reports of Judgments and Decisions* 1996-V, § 22) that choice of a child's forename by its parents comes within their private sphere. The Court observes that the subject-matter of the complaint falls within the ambit of Article 8 (see also *Stjerna v. Finland*, judgment of 25 November 1994, Series A no. 299-B, § 37, *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A no. 280-B, § 24). Article 8 is therefore applicable in the instant case. Indeed, this has not been contested by the parties.

2. Whether the case involves a positive obligation or an interference

29. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life. The boundaries between the State's positive and negative obligations under Article 8 do not lend

themselves to precise definition. The Court has held that not all regulation of names will necessarily constitute an interference. While it is true that an obligation to change one's name would be regarded as an interference, the refusal to allow an individual to adopt a new name cannot necessarily be considered an interference (see *Stjerna,* cited above, § 38). The applicable principles are nonetheless similar. In particular, in both contexts regard must be had to the fair balance which has to be struck between the competing interests; and in both contexts the State enjoys a certain margin of appreciation (see, *inter alia, Evans v. the United Kingdom* [GC], no. 6339/05, § 75, ECHR 2007-).

30. In the present case, the Court finds that the principal issue is whether in the special circumstances of the case the application of the Names Act struck a fair balance between the competing public and private interests involved.

3. Compliance with Article 8

31. The Court reiterates that in cases arising from individual applications its task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (*Olsson v. Sweden (no. 1),* judgment of 24 March 1988, Series A no. 130, § 54). Consequently, the Court's task is not to substitute itself for the competent Finnish authorities in determining the most appropriate policy for regulating names in Finland. It is for the Court to review under the Convention whether the domestic authorities' refusal to register the chosen name in the instant case in the exercise of their margin of appreciation, is capable of amounting to an infringement of the applicants' rights guaranteed by Article 8 (see *mutatis mutandis Stjerna*, § 39). The margin of appreciation which the State authorities enjoy in the sphere under consideration is wide (see, *inter alia, Stjerna,* § 39 and *Mentzen alias Mencena v. Latvia* (dec.), no. 71074/01, ECHR 2004-XII).

32. The Court found no violation of the applicants' rights under Article 8 in the case of *Guillot* (cited above, § 27). In that case the prejudice caused by the refusal to register the forename chosen for the applicants' child, "Fleur de Marie", was found not to be sufficient to raise an issue of failure to respect the applicants' private and family life as the alternative name "Fleur-Marie" was allowed. In reaching this conclusion, the Court gave weight to the fact that the French Court of Appeal and Court of Cassation found the name "Fleur de Marie" to be eccentric and excessively whimsical (§§ 10-11) and likely to harm the interests of the child. In the case of *Salonen* (dec.), cited above, the Commission held that the refusal of the Finnish authorities to allow the applicants to name their daughter "Ainut Vain Marjaana" (The One and Only Marjaana) could not be considered unreasonable, having regard to the aim of protecting the child

from the possible prejudice caused by a forename which might be considered inappropriate by others.

33. The instant application is, however, to be distinguished from the above-mentioned cases. It was not contended either in the domestic proceedings or in the proceedings before the Court that the applicants' son would suffer prejudice if he were to be registered with the name "Axl Mick" or that the parents' choice of forename was in any way inappropriate for their son or contrary to his interests. Furthermore, unlike in *Salonen* and *Guillot* where no other "Ainut Vain Marjaanas" or "Fleur de Maries" had been registered in the relevant domestic population or civil status registers, the name "Axl" had been accepted for official registration by the Finnish authorities, although it was not accepted for the applicants' child.

34. Having regard to the above considerations, the Court will examine whether the respondent State's failure to register the chosen name in the instant case raises an issue of failure to respect the applicants' private and family life. In weighing up the different interests at stake, consideration should be given, on the one hand, to the applicants' right to choose a forename for their child and, on the other hand, the public interest in regulating the choice of names.

35. With regard to the public interest, the Court has accepted that legal restrictions on changing one's name may be justified in the public interest; for example in order to ensure accurate population registration or to safeguard the means of personal identification (*Stjerna*, cited above, § 39). Restrictions on the choice of forenames can also be justified in the interests of the child and society (*Salonen* (dec.), cited above).

36. The Government argued that the objective in the application of the Names Act was to protect a child from unsuitable names and, further, to maintain a distinctive name practice in a small country like Finland. The Court accepts that due regard has to be given to the child's interests. The protection of the child from an unsuitable name (such as ridiculous or whimsical names) is in the public interest. As to the aim of preserving a distinctive national name practice, the Court has acknowledged that measures intended to protect a given language is a legitimate aim (see *Mentzen alias Mencena* (dec.), cited above). Therefore, the Court can accept that the preservation of a national name practice may be considered part and parcel of that aim and therefore in the public interest.

37. Undoubtedly, names retain a crucial role in a person's identification (*Stjerna*, cited above, § 39). In Finland, any name can be accepted for registration, even a completely "new" name, if there are no obstacles to its acceptance under the Names Act. Consequently, the domestic authorities have a broad discretion in applying the Names Act in each particular case.

38. As to the instant case, the name "Axl", chosen by the applicants, had been used within the family circle since the applicants' son's birth in 1999 without any difficulty. The Court observes, as noted by the applicants, that

the chosen forename "Axl" cannot be seen to differ vastly from names which are commonly used in Finland, such as "Alf" and "Ulf" (see paragraph 20 above). The name was not ridiculous or whimsical, nor was it likely to prejudice the child, and it appears that it has not done so. It was also pronounceable in the Finnish language and used in some other countries. Had a vowel not been elided, it would automatically have been officially registered as a forename. The name cannot therefore be deemed unsuitable for a child. The Court attaches particular importance to the fact that the name "Axl" had not been "new" since three persons named "Axl" were found in the official Population Information System when the applicants' son was born, and, subsequently, at least two other children have been given the said name. At least four of them were Finnish nationals. It is therefore apparent that the said name had already gained acceptance in Finland, and it has not been contended that this has had any negative consequences for the preservation of the cultural and linguistic identity of Finland. It is true that the margin of appreciation, which a State enjoys in this particular sphere, is wide. However, given the above considerations, in particular the fact that the name "Axl" had been accepted for official registration in other situations, it is difficult for the Court to accept the national authorities' grounds for not registering the same name for the applicants' child.

39. In the Court's view, the public interest considerations relied on by the Government cannot be said to outweigh the interests claimed by the applicants under Article 8 of the Convention in having their son officially registered under a forename of their choosing. A fair balance has therefore not been struck.

Accordingly, there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

40. The applicants further complained of discrimination contrary to Article 14 taken in conjunction with Article 8. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] 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 Court observes that this complaint is closely linked to the complaint under Article 8. Given the facts and having regard to its conclusion under Article 8 (see paragraphs 38-39 above) there is no need to examine separately the additional complaint under Article 14 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

43. The applicants did not claim any pecuniary damage. Under the heading of non-pecuniary damage they requested that the forename they had chosen for their son be officially registered and that they be awarded 3,000 euros (EUR) for suffering and distress caused by the alleged violation. In the alternative, should the Government fail to secure the registration of the name, they claimed an additional EUR 30,000 for suffering and distress.

44. The Government considered the claim excessive. In their view, the mere finding of a violation would suffice. In any event, the compensation should not exceed EUR 2,000.

45. There is no doubt that the applicants have suffered some distress and anxiety due to the refusal to register the forename they had chosen for their son, which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicants EUR 2,000 under this head.

As to the applicants' alternative claim, the Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, *mutatis mutandis*, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). It is not for the Court to award additional non-pecuniary damage in this connection. The applicants' alternative claim must therefore be rejected.

B. Costs and expenses

46. The applicants requested reimbursement of the court fees incurred by them in the Helsinki Administrative Court, namely 400 (Finnish marks

"FIM", about EUR 67.28) and in the Supreme Administrative Court, namely FIM 1,000 (about EUR 168.19).

47. They also claimed the reimbursement of their legal costs and expenses incurred in the proceedings before this Court, amounting to EUR 2,449 (inclusive of value-added tax, "VAT", in the amount of EUR 396 and translation costs EUR 253 exempt from VAT). The legal aid paid by the Council of Europe amounting to EUR 715 had not been deducted from those amounts.

The Government found the total amounts claimed reasonable as to *quantum*.

48. According to the Court's case-law, applicants are entitled to reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are recoverable only in so far as they relate to the violation found (see, for example, *I.J.L., G.M.R. and A.K.P. v. the United Kingdom* (*Article 41*), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001). Taking into account the legal aid granted by the Council of Europe, the Court considers it reasonable to award the applicants EUR 1,970 for their costs and expenses in connection with the proceedings before the Court (inclusive of VAT).

C. Default interest

49. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds* that it is not necessary to examine separately the applicants' complaint under Article 14 of the Convention taken in conjunction with Article 8;

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;

(ii) EUR 1,970 (one thousand nine hundred and seventy euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President