



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

FOURTH SECTION

CASE OF SAHINER v. AUSTRIA

(Application no. 21669/21)

JUDGMENT

Art 8 • Positive obligations • Private life • Refusal to grant applicant's request to change the forename "Özlem" given to her at birth to "Lemilia" which she was unofficially using and identified with • Wide margin of appreciation • Chose forename not "common" as required by the relevant domestic law • In circumstances no positive obligation created for the authorities to register a forename not complying with the State's national naming law and practice • Fair balance between competing interest struck

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 June 2025

FINAL

03/09/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Sahiner v. Austria,

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

Lado Chanturia, *President*,

Tim Eicke,

Lorraine Schembri Orland,

Ana Maria Guerra Martins,

Anne Louise Bormann,

Sebastian Rădulețu,

András Jakab, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 21669/21) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Ms Özlem Sahiner (“the applicant”), on 19 April 2021;

the decision to give notice to the Austrian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 13 May 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the Austrian authorities’ refusal to grant the applicant’s request to change her forename from “Özlem” to “Lemilia”. The applicant relied on Articles 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1996 and lives in Hall in Tyrol.

3. The Government were represented by their Agent, Mr H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

4. The facts of the case may be summarised as follows.

5. The applicant was given the Turkish forename “Özlem”, which was registered upon her birth in Austria. Her father had insisted on that name, whereas her mother wanted to name her “Lemilia”. After the divorce of her parents, the applicant was raised by her mother and claims to have never met her father except for one difficult experience with him in her childhood. Since her birth, her mother has always called the applicant “Lemilia”. She also claims to be known as “Lemilia” to her friends and colleagues. The applicant, who did not wish to have any contact or association with her father, changed

the surname she had received from her father to that of her mother (“Sahiner”).

I. THE APPLICANT’S NAME CHANGE REQUEST

6. On 5 February 2019 the applicant lodged a request with the Innsbruck District Administrative Authority (*Bezirkshauptmannschaft*) to have her forename changed from “Özlem” to “Lemilia”.

7. On 7 February 2019, after a preliminary examination of the request, the District Administrative Authority informed the applicant that the forename “Lemilia” could not be found in the Austrian registrars’ databases, including the encyclopaedia and database of forenames and the list of all forenames registered since 1984 which contains approximately 36,000 female and 33,000 male forenames. An enquiry to the Institute of Linguistics of the University of Innsbruck confirmed that the name existed neither in the Italian language nor in the Spanish language, but was likely a combination of the forename “Emilia” and a definite article (“‘la’ or ‘l’”). The authority informed the applicant that since “Lemilia” was not a common (*gebräuchlich*) forename, as required under section 3(1)(7) of the Name Change Act (*Namensänderungsgesetz*; see paragraph 17 below), it intended to reject the applicant’s request. The applicant was invited to make submissions before a decision was taken.

8. On 26 April 2019 the applicant submitted that in her view the forename “Lemilia” satisfied the requirements of the Name Change Act. She argued that the term “common” was not clearly defined in that Act and that, according to the explanatory notes to the draft law (see paragraph 18 *in fine* below), its purpose was merely to ensure that the gender of a person was recognisable through the forename. Not only was “Lemilia” clearly a female forename but it was also common as it could be found on various online databases and social media platforms. She submitted excerpts from her online search – in particular, social media profiles of individuals named “Lemilia”. The applicant further argued that she identified with the name “Lemilia”, that all her family and friends knew her by that name and that a refusal to allow her to change her name would infringe her right to respect for private and family life. On 30 April 2019 the applicant submitted a copy of a Brazilian driving licence issued to a person she had found on social media who had the forename “Lemilia”.

9. On 27 May 2019 the District Administrative Authority rejected the applicant’s request, referring to section 3(1)(7) of the Name Change Act (see paragraph 17 below) on the grounds that “Lemilia” was not a common forename. It could not be found in the Austrian registrars’ databases, nor did it exist in the Italian or Spanish language (see paragraph 7 above). The District Administrative Authority stated that it was not necessary for the forename to be common in Austria and that the statistical frequency of a

forename was not decisive; the requirement would also be satisfied by a foreign name or a rarely used one, provided that it possessed a certain degree of frequency (*Häufigkeit*), prominence (*Bekanntheit*) or commonness (*Gebräuchlichkeit*). The excerpts from the applicant's online search for people with the name "Lemilia" and the copy of a Brazilian driving licence issued to a person named "Lemilia" (see paragraph 8 *in fine* above) were not considered pertinent. Naming laws in Latin American countries were much less restrictive than those applicable in Europe or Austria, allowing persons in that region to be named even after a number or descriptions such as "Madeinusa". It was thus not surprising that persons with the name "Lemilia" could be found in Latin America.

II. APPEAL PROCEEDINGS BEFORE THE REGIONAL ADMINISTRATIVE COURT

10. On 25 June 2019 the applicant lodged a complaint against the District Administrative Authority's decision (*Bescheidbeschwerde*). She argued that the District Administrative Authority had falsely interpreted the requirement of commonness to imply statistical frequency or prevalence of a name in Austria (see paragraph 9 above). She again referred to the explanatory notes to the draft law (see paragraph 18 below) to argue that the requirement of commonness (*Gebräuchlichkeit*) was aimed at preventing names that were ridiculous, offensive, not common for the identification of persons or not suitable for the identification of a person's gender. The forename "Lemilia" was evidently female and common. The social media profiles she had submitted of people with the name "Lemilia" and the copy of a Brazilian driving license (see paragraph 8 *in fine* above) should have been sufficient to prove this. It was also undisputed that the name "Emilia" was common and the minor addition of one letter to that name should not render the name uncommon. The District Administrative Authority's reasoning meant that it would never be possible to establish new names in Austria. The District Administrative Authority had also contradicted itself by denying that statistical frequency was decisive to satisfy the requirement of commonness but at the same time refusing the applicant's name change request on account of not finding the forename "Lemilia" in Austria. The applicant also alleged a violation of her right to respect for private and family life. She identified with the name "Lemilia" and for a long time had believed that that was her real name. It caused significant inconvenience to the applicant to have to clarify to her long-term friends that her official name was not "Lemilia".

11. On 4 December 2019 the Tyrol Regional Administrative Court (*Landesverwaltungsgericht Tirol* – hereinafter "the Regional Administrative Court"), after holding an oral hearing, dismissed the appeal and upheld the District Administrative Authority's conclusion that "Lemilia" was not a common forename (see paragraph 9 above). The Regional Administrative

Court noted that the applicant did not identify with the forename “Özlem”, that she had always been called “Lemilia”, that she wanted nothing to do with her father, from whom her mother was divorced, and that, for all those reasons, she had already changed her surname to that of her mother and now intended to change her forename as well. While, in the view of the Regional Administrative Court, the Name Change Act (see paragraphs 15-18 below) indeed did not define in more detail the meaning of the term “common” and the statistical frequency of the use of a forename did not play a role in the assessment, the term “common” had to be read to mean “customary” (*allgemein üblich*). The evidence provided by the applicant was not sufficient to establish that “Lemilia” was customary. The excerpts from social media platforms did not prove anything, as on those platforms it was possible to register accounts under fake names. The copy of a single driving license issued to a person with the forename “Lemilia” could also not rebut the credible conclusion provided by the Institute of Linguistics that the forename did not exist (see paragraph 7 and 9 above). Furthermore, the fact that the forename “Lemilia” only carried one additional letter in comparison with the common forename “Emilia” did not make it common. The applicant’s claims that she did not identify with her official forename and that she had always been called “Lemilia” by her mother, friends and colleagues, while being understandable reasons for wanting to change her forename, did not alter the conclusion that the requested forename was not common.

III. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT AND THE SUPREME ADMINISTRATIVE COURT

12. On 20 January 2020 the applicant lodged a constitutional complaint (*Erkenntnisbeschwerde*) against the decision of the Regional Administrative Court (see paragraph 11 above) with the Constitutional Court (*Verfassungsgerichtshof*) alleging that the decision, as well as the Name Change Act (see paragraph 15 *et seq* below) it was based on were unconstitutional. She argued that her patriarchal father had forced the name “Özlem” on her and her mother, that she did not know him apart from one difficult childhood experience, that she was known as “Lemilia” and that, against this background, she had decided to officially change her forename to the one she had always identified with. Her reasons to request the name change were serious and outweighed any public interests. The District Administrative Authority (see paragraph 9 above) and the Regional Administrative Court (see paragraph 11 above) had not struck a fair balance between her interest in the name change and any public interests pursued by the refusal of her request. The Regional Administrative Court’s interpretation of the requirement of commonness as meaning “customary” was excessive and not justified by a public interest. The applicant’s rights under Article 8 of the Convention had thus been violated. She further complained of a violation

of Article 14 of the Convention on account of the difference in treatment that she had received as compared with persons born abroad who were named “Lemilia” and would be permitted to keep that name in Austria or be registered with it upon naturalisation. The applicant asked for the constitutionality of section 3(1)(7) of the Name Change Act (see paragraph 17 below) to be reviewed as the provision was too vague and in contravention of Article 8 of the Convention, given that any interference with the right to a name had to be based on a clearly defined law.

13. On 8 June 2020 the Constitutional Court (E 254/2020) declined to deal with the applicant’s complaint (see paragraph 12 above). It referred to its case-law (see paragraph 21 below) to the effect that it was legitimate for the legislature to require surnames to have a real point of reference in the societal development of names and not to be freely invented. It was therefore also compatible with Article 8 of the Convention for the legislature to require evidence of the pertinent use of a forename either in Austria or abroad in order for that forename to be regarded as common, and thus not to allow, in the light of the identity-forming significance of a name, the use of every linguistic enunciation (*Enuntiation*) that was suitable for individual identification and was neither offensive nor ridiculous as a forename. Against the background of that case-law, the Constitutional Court concluded that the applicant’s claims did not have sufficient prospects of success. It referred the case to the Supreme Administrative Court (*Verwaltungsgerichtshof*).

14. On 30 September 2020 the Supreme Administrative Court (Ro 2020/01/0013) dismissed the applicant’s appeal on points of law (*Revision*), upholding the reasoning of the Regional Administrative Court. It examined the meaning of the term “common” and concluded, by reference to its case-law and that of the Constitutional Court (see paragraphs 21-22 below), that it required a forename to be customary or widespread (*üblich oder (weit)verbreitet*) either in Austria or abroad and to have a real reference point in the social development of names and not be freely invented. The Regional Administrative Court had thus correctly found, on the basis of sufficient reasons, that the forename “Lemilia” was not common within the meaning of section 3(1)(7) of the Name Change Act (see paragraph 11 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGISLATION

A. The Name Change Act

15. Section 1 of the Name Change Act (*Namensänderungsgesetz*; Federal Law Gazette no. 195/1988) provides that a request by a person to have his or her name changed based on one of the grounds listed in section 2 of the Act

will be granted, unless there are grounds for refusal under section 3 of the Act.

16. Section 2(1) of the Name Change Act enumerates various grounds on which a surname may be changed. Section 2(1)(11) provides that if a person so wishes, he or she may also request a name change “for other reasons” (*Wunschnamensänderung*). Under section 2(2) of the Name Change Act, the grounds for a change of surname also apply to that of a forename, including the possibility of requesting a name change “for other reasons”.

17. However, a change of surname or forename requested under one of the grounds enumerated in section 2 may not be authorised if one of the grounds for refusal listed in section 3(1) of the Name Change Act applies, the relevant part of which provides:

Refusal of authorisation

“(1) The change of surname or forename may not be authorised if

1. the change of surname would enable the circumvention of legal provisions;
2. the requested surname is ridiculous, offensive or not common for the identification of persons in Austria;

...

6. the requested change of surname or forename is detrimental to the welfare of a person affected by it who is a minor or incapable of making decisions for himself or herself;

7. the requested forename is not common or does not correspond to the applicant’s gender as a first forename;

...”

18. The explanatory notes to the draft Name Change Act (*Erläuterungen zur Regierungsvorlage*, 467 BlgNR, XVII. GP, p. 9) explain that, in accordance with section 3 of the Name Change Act, a request for a change of surname or forename will be refused when important public or private interests speak against it. For instance, section 3(1)(2) prevents the choice of a surname that is ridiculous, offensive or not common for the identification of persons in Austria, such as meaningless combinations of letters (for example, “ABC”) or numbers (for example, “007”) or names that are commonly used for animals, plants or objects (for example, “Crocodile”, “Autumn Crocus” or “Aluminium”). The notes further explain that section 3(1)(7) of the Name Change Act is intended to prevent a forename not in compliance with what is now section 13(2) of the Civil Status Act (see paragraph 19 below) from being registered through a name change (*Erläuterungen zur Regierungsvorlage*, 467 BlgNR, XVII. GP, p. 10). Section 3(1)(7) of the Name Change Act focuses more on the commonness of a forename in Austria, as “forenames that are uncommon in Austria often create doubts about the gender of the person carrying the name”.

B. The Civil Status Act

19. Section 13(2) of the Civil Status Act (*Personenstandsgesetz*; Federal Law Gazette I no. 16/2013) provides that a forename may not be registered for a child if it contradicts his or her gender, is not common as a forename or is detrimental to the best interests of the child.

20. The explanatory notes to the original draft law from 1981 (*Erläuterungen zur Regierungsvorlage*, 656 BlgNr., XV. GP, p. 26) explain that while names can in principle be freely chosen, some limits had to be introduced for the protection of public order. Thus, section 13(2) of the Civil Status Act should be read as excluding forenames that are nonsensical or offensive, that do not correspond to the child's gender or that are not forenames (such as combinations of numbers or letters or names typically used as surnames).

II. DOMESTIC CASE-LAW

21. In a decision of 15 October 2016 (E 880/2016), the Constitutional Court dealt with a case involving the refusal of a change of surname on the grounds that it did not comply with section 3(1)(2) of the Name Change Act (see paragraph 17 above). Referring to Article 8 of the Convention and the case-law of the European Court of Human Rights, the Constitutional Court held that generally, it was legitimate for the legislature, in accordance with section 3(1)(2) of the Name Change Act, to require a surname to be common for the identification of persons in Austria, to have a real point of reference in the societal development of names in Austria (for instance, through a historical aspect or developments such as migration) and not to be freely invented. However, the Constitutional Court also emphasised that those conditions had to be interpreted in line with the Convention and, in particular, the identity-forming significance of the name for a person. In the case before it, the Constitutional Court ruled that the lower court had incorrectly interpreted section 3(1)(2) of the Name Change Act to require that the requested surname exist in Austria at the time of the name change and had not taken into account the fact that the applicant's ancestors had borne the name in the past and that he identified with it.

22. In a decision of 8 April 1987 (86/01/0284), the Supreme Administrative Court delivered a judgment in a case concerning the choice of a forename for a child. It held that section 13(2) of the Civil Status Act (see paragraph 19 above) had to be interpreted in a way that gave parents the freedom to choose forenames for their child that were common abroad. The statistical frequency of the use of a forename in Austria was thus not decisive in the examination of the commonness of a forename. In another decision, delivered on 22 June 1988 (87/01/0116), the Supreme Administrative Court found that while the provenance of a forename was not relevant, and both

Austrian and foreign names were permitted, the law clearly required a forename to be common.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that the refusal of her request to have her forename changed amounted to a violation of her right to respect for her private and family life as guaranteed in Article 8 of the Convention, which, in so far as relevant, reads:

“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 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 applicant*

24. The applicant alleged that the refusal of her request to have her forename changed from “Özlem” to “Lemilia” on the grounds that the forename “Lemilia” was not common within the meaning of section 3(1)(7) of the Name Change Act (see paragraph 17 above) had constituted an interference with her right to respect for her private and family life that had not been necessary in a democratic society.

25. The applicant argued that a balancing of interests should have concluded in her favour. Referring to the significance of the name for the identity of a person, she submitted that she had always been called “Lemilia” by her mother, friends and colleagues and that she only identified with that forename and not at all with “Özlem”, a name given by her father with whom she had no contact and from whom she wanted to distance herself. The forename change would prevent her from being found by her father and allow her to leave her past behind and further her inclusion in Austrian society. Throughout the domestic proceedings no public reasons had been advanced that could justify the refusal of her request. She contended that her individual situation had not been addressed and that her estrangement from her father and the emotional distress associated with her current name had not been taken into account. She challenged the Government's contention (see paragraph 27 below) that the refusal of the name change had been in accordance with the law and served a legitimate aim. The law did not specify what “common” meant and the authorities had falsely interpreted it as meaning “widely used or generally accepted”. As for the aim referred to by

the Government, namely the protection of public order and the proper identification of persons, the applicant submitted that the name “Lemilia” did not endanger public order and was suitable to identify a person. The applicant disagreed with the Government’s argument (see paragraph 29 below) that she could have chosen any other common name, as she only identified with “Lemilia” because it had identity-forming significance for her.

26. In addition, the applicant referred to the Court’s judgment in *Johansson v. Finland* (no. 10163/02, 6 September 2007), where the Court had decided in favour of the applicant, who had chosen the forename “Axl” for his child – which was not significantly different from the common Finnish forename “Axel”. She argued that the Court’s conclusion in that case – that no fair balance had been struck between the competing interests – was valid in the present case too, as “Lemilia” was also not much different from the accepted forename “Emilia”. Unlike in *Guillot v. France* (24 October 1996, *Reports of Judgments and Decisions* 1996-V), there was further no need to protect the applicant from an eccentric or whimsical name. “Lemilia” might be a rare forename but was in any event normal, not wholly fabricated (as it existed in other jurisdictions) and sounded beautiful.

2. The Government

27. The Government submitted that it could be left open whether the refusal of the applicant’s name change from “Özlem” to “Lemilia” constituted an interference with her rights under Article 8 of the Convention as, in any case and contrary to her submissions, the refusal had complied with Article 8 § 2 of the Convention. In particular, it had been based on a law, namely section 3(1)(7) of the Name Change Act (see paragraph 17 above), which had been declared constitutional by the Constitutional Court (see paragraphs 13 and 21 above). Accordingly, a forename should have a real point of reference in the societal development of names and should not be invented. The Government argued, with reference to *Stjerna v. Finland* (25 November 1994, § 39, Series A no. 299-B), that the requirement in question served the legitimate purpose of ensuring accurate registration of the population and of safeguarding the means of personal identification. Only common names allowed the proper identification of a person, while invented names did not fulfil that regulatory function for lack of traceability.

28. The Government was of the view that both the District Administrative Authority and the Austrian courts had thoroughly examined the applicant’s request and had explained in detail that the forename requested by her was not common. In doing so, they had weighed the applicant’s private interests against legitimate public interests both in ensuring accurate registration of the population and in safeguarding the means of personal identification. The applicant had not been able to prove with convincing evidence that the requested forename was common.

29. The Government challenged the applicant's argument (see paragraph 26 above) regarding the similarity of the names "Lemilia" and "Emilia", as this did not make "Lemilia" common. The present case was different from *Johansson* (cited above) because that case concerned the refusal to register a different spelling of a common forename, whereas "Lemilia" in the present case was a "fantasy name", which had never been given to a person in Austria before. The applicant could have chosen the name "Emilia", or any other common name, to achieve her goal of distancing herself from her father and their shared past.

B. The Court's assessment

1. Admissibility

30. The Court notes at the outset that neither of the parties sought to challenge the applicability of Article 8 of the Convention in the present case, and the Court sees no reason to do so itself. The Court reiterates that issues regarding the change of an individual's surname or forename fall within the ambit of Article 8 of the Convention since the name, as a means of personal identification, concerns an individual's private and family life (see, among many other authorities, *Burghartz v. Switzerland*, 22 February 1994, § 24, Series A no. 280-B; *Stjerna*, cited above, § 37; *Garnaga v. Ukraine*, no. 20390/07, § 36, 16 May 2013; *Henry Kismoun v. France*, no. 32265/10, § 25, 5 December 2013; and *Aktaş and Aslaniskender v. Turkey*, nos. 18684/07 and 21101/07, § 42, 25 June 2019).

31. The Court thus considers that Article 8 of the Convention is applicable to the present case, and that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) General principles

32. The Court firstly reiterates that, while an obligation to change one's name would be regarded as an interference in the exercise of the right to respect for an individual's private life, the refusal to allow an individual to adopt a specific new name cannot necessarily be considered an interference (see *Stjerna*, § 38; *Johansson*, § 29; *Garnaga*, § 37; and *Henry Kismoun*, § 26, all cited above). The Court reaffirms that although the essential object of Article 8 of the Convention is to protect the individual against arbitrary interferences by the public authorities with his or her exercise of the right protected, it does not merely compel the State to abstain from such interference; there may in addition be positive obligations inherent in effective "respect" for private life (see *Stjerna*, § 38, and *Johansson*, § 29, both cited above). While the boundaries between the State's positive and

negative obligations under Article 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 (see *Johansson*, cited above, §§ 29-30; *Stjerna*, cited above, § 38; *Aktaş and Aslaniskender*, cited above, § 44; *Güzel Erdagöz v. Turkey*, no. 37483/02, § 46, 21 October 2008; *Garnaga*, cited above, § 37; and *Golemanova v. Bulgaria*, no. 11369/04, § 38, 17 February 2011).

33. The Court further reiterates that names retain a crucial role in a person's identification. However, while there may exist genuine reasons prompting an individual to wish to change his or her name, the Court has accepted that legal restrictions on such a possibility may be justified in the public interest, for example in order to ensure accurate population registration or to safeguard the means of personal identification (see *Stjerna*, cited above, § 39; *Johansson*, cited above, § 35; *Aktaş and Aslaniskender*, cited above, § 45; *Güzel Erdagöz*, cited above, § 49; and *Künsberg Sarre v. Austria*, nos. 19475/20 and 3 others, § 52, 17 January 2023). Restrictions on the choice of forenames can also be justified in the interests of the child and society (see *Johansson*, cited above, § 35; see also *Salonen v. Finland*, no. 27868/95, Commission decision of 2 July 1997). In *Johansson* (cited above, § 36), the Court further stated that measures intended to protect a given language constituted a legitimate aim and that the preservation of a distinctive national naming practice was in the public interest.

34. The process by which surnames and forenames are given, recognised and used is a domain in which national particularities are the strongest, and influenced by a multitude of factors of a historical, linguistic, religious and cultural nature (see *Ismayilzade v. Azerbaijan*, no. 17780/18, § 33, 18 January 2024). Moreover, there is little common ground between the domestic systems of the Convention countries as to the conditions on which a change of name may be legally effected (see *Stjerna*, cited above, § 39). The margin of appreciation which the State authorities enjoy in the sphere of regulating name changes is thus wide (see *Stjerna*, § 39; *Henry Kismoun*, § 28; and *Aktaş and Aslaniskender*, § 45, all cited above).

35. The Court concludes that a legal restriction on the possibility to change one's name does not constitute an interference under Article 8 of the Convention (see paragraph 32 above). Given the lack of a European consensus and the wide margin of appreciation enjoyed by States in that area (see paragraph 34 above), the Court further notes that, in principle, there is no general positive obligation of States to allow an individual to change his or her name. Rather, the Court is called upon to carefully assess whether, by virtue of the particular context of a given case, the respondent State may bear a positive obligation under Article 8 of the Convention in relation to the applicant's request to change his or her name. The Court is mindful that in other cases it considered that the refusal of domestic authorities to authorise

a change of surname or forename may fall within the sphere of a State's positive obligations under Article 8 (see *Henry Kismoun*, § 27, and *Aktaş and Aslaniskender*, § 43, both cited above). However, the Court takes note of the particular circumstances of these cases. In *Henry Kismoun*, the national authorities had rejected the applicant's request to change his last name to that of his father which he had already been carrying in another jurisdiction and wanted to establish as his sole name (see *Henry Kismoun*, cited above, § 36). In *Aktaş and Aslaniskender*, the authorities had rejected the name change requests of the applicants because the requested names, an Assyrian name for the first applicant – an Assyrian by origin – already recognised in another jurisdiction and a Sanskrit name for the second applicant – a Buddhist by religion –, were not in the Turkish language (see *Aktaş and Aslaniskender*, cited above, §§ 6, 16, 21 and 46).

36. The Court's task is thus not to substitute itself for the competent domestic authorities in determining the most appropriate policy for regulating changes of forenames in a Contracting State, nor is it to review any such legislation or practice in the abstract (see *Johansson*, § 31, and *Henry Kismoun*, § 28, both cited above). Rather, it is for the Court to examine whether the refusal by the domestic authorities, in the exercise of their power of appreciation, to register the chosen name in the instant case and the manner in which the relevant legislation was applied to the applicant amounted to an infringement of her rights guaranteed by Article 8 (see *Johansson*, § 31, and *Güzel Erdagöz*, § 48, both cited above). It is for the decision-making body to set out relevant and sufficient reasons for its refusal to authorise the change of an individual's name in order for that restriction to be considered "necessary in a democratic society" (see *Golemanova*, § 39, and *Güzel Erdagöz*, §§ 50-55, both cited above).

37. The Court also reiterates that whilst Article 8 contains no explicit procedural requirements, it is important for the effective enjoyment of the rights guaranteed by this provision that the relevant decision-making process leading to measures of interference be fair and such as to afford due respect for the interests safeguarded by Article 8 (see *Henry Kismoun*, § 29; *Ismayilzade*, § 34; and *Golemanova*, § 40, all cited above).

38. The Court has applied the test established above to a number of cases which concern the choice of forenames for a child or the refusal of a request to change a forename and are thus comparable to the present application. In *Johansson* (cited above, § 38), the Court found a violation on account of the fact that the Finnish authorities had refused to register the name "Axl" for the applicant's child although the name had been accepted for official registration in other situations. Similarly, the Court found a violation in *Güzel Erdagöz* (cited above, §§ 51-54) on account of the fact that the national authorities, when refusing to rectify the spelling of the applicant's forename to reflect its Kurdish origin, did not base their decision on a clearly established law or demonstrate in their reasoning how the change of the applicant's name to a

non-Turkish name was likely to go against a public interest. Conversely, the Court found no violation in *Guillot* (cited above, §§ 10-11), where the forename chosen for the applicants' child, "Fleur de Marie", was considered eccentric, excessively whimsical and likely to harm the child. The Court similarly did not find a violation in *Ismayilzade* (cited above, §§ 39-40) as the applicant had been provided with sufficient procedural safeguards to challenge the refusal to register a forename for her child and the inconvenience complained of was not sufficient to raise an issue of failure to respect private life under Article 8 of the Convention. In *Golemanova* (cited above, § 42), where the applicant had been refused permission to change her official forename to a forename she had been unofficially using since birth, the Court held that the decision-making process had provided sufficient procedural safeguards as the applicant had been represented by a lawyer and had had her request to change her name, as well as her arguments as to the alleged necessity of the name change and supporting evidence, examined at three levels of jurisdiction (see also *Ismayilzade*, cited above, § 39). In the Court's view, the national courts had properly weighed her interest in carrying the name she was known by in her circles against the interests of society, such as the need to preserve stability in personal identification (see *Golemanova*, cited above, §§ 45-46).

(b) Application of the above principles to the present case

39. In the present case, the applicant argued that there had been an interference with her right to private and family life as a result of the authorities' refusal to authorise the change of her forename from "Özlem" to "Lemilia". She contended that not being allowed to officially bear a name that she identified with, that she was known by among her family and friends, and that would help her distance herself from her father had caused a significant burden to her (see paragraphs 24-25 above). The Court considers that, as noted above (see paragraph 35 above), such a refusal to authorise a name change does not constitute an interference under Article 8 of the Convention. While there is furthermore no general positive obligation of States to allow name changes, there may be particular circumstances in a case which give rise to a respondent State's positive obligation under Article 8 of the Convention in relation to an applicant's name change request. The Court must thus examine whether the particular circumstances of the present case – assessed against the criteria set out in the above case-law – may be considered to have given rise to a positive obligation of the respondent State under Article 8 of the Convention (see paragraphs 32-38 above).

40. In this context, the Court must thus ascertain which interests are at stake for the applicant and whether the national authorities struck a fair balance between the competing interests. The Court reiterates that in weighing up the different interests at stake, consideration should be given, on the one hand, to the applicant's interest in bearing the name of her choice,

and on the other hand, the public interest in regulating the choice of registered forenames (see *Ismayilzade*, cited above, § 31). For that purpose, the Court must determine whether the Austrian authorities set out relevant and sufficient reasons for the refusal of the applicant's change of forename. Moreover, the Court must ascertain whether the decision-making process was fair and such as to afford due respect for the interests safeguarded by Article 8 of the Convention (see the case-law cited in paragraphs 33-37 above).

41. The Court firstly notes that the applicant's request to change her forename was rejected by the District Administrative Authority because the forename was not "common" as required by section 3(1)(7) of the Name Change Act (see paragraph 9 above). While Austrian law provides that individuals may request a change of forename for any reason (see paragraph 16 above), certain legal restrictions apply to that possibility. Pursuant to section 3(1)(7) of the Name Change Act, a request to change one's forename must be refused if, *inter alia*, "the requested forename is not common" (see paragraph 17 above). The requirement is based on the Civil Status Act, which only allows common forenames to be registered upon the birth of a child (see paragraph 19 above), and was also applied to name changes to prevent uncommon forenames from being registered by means of a name change (see paragraph 18 above). As can be seen from the explanatory notes to the draft law, the restrictions on the right under Austrian law to freely choose one's name had to be introduced for the protection of public order (see paragraph 20 above). The Government further argued that the requirement in issue served to ensure accurate registration of the population and to safeguard the means of proper personal identification, which was not possible through invented names that lacked traceability (see paragraph 27 above).

42. The Court accepts that in principle the requirement that a name must be common serves a public interest, that is to preserve a distinctive national naming practice in a jurisdiction that does not allow freely invented names to be registered (see the case-law cited in paragraph 33 above). In that connection, the Court notes that the Constitutional Court has held, in its past case-law, that the Name Change Act required names to have a real reference point in history or the societal development of names in Austria, including through migration, and to not be freely invented (see paragraph 21 above). The Court is satisfied that this requirement may fall among the restrictions a State may legitimately introduce to regulate name changes, a sphere in which it enjoys a wide margin of appreciation (see the case-law cited in paragraph 34 above).

43. Turning to the private interests asserted by the applicant, the Court observes that there were two distinct aspects to her name change request. The first was the applicant's wish to officially carry the forename "Lemilia", which she had been unofficially using since birth, was known by among family and friends and identified with. The second aspect related to her desire to no longer bear the forename "Özlem", which had been chosen by her

father, whom she had had a difficult relationship in the past with and wished to distance herself from. The Court notes that the authorities did not take issue with this second interest of the applicant but rather with the forename she had chosen to replace “Özlem”, as it did not fulfil the conditions set out in the law (see paragraph 41 above). The Court agrees with the Government’s argument (see paragraph 29 above) that the second interest asserted by the applicant was not restricted by the authorities’ refusal of her request and could have been achieved by choosing any other common forename. Moreover, it appears that the applicant only explained the full extent of her history with her father in her appeal to the Constitutional Court (see paragraph 12 above). She made no mention of her father in her request and statement to the District Administrative Authority (see paragraphs 6 and 8 above) or in her appeal to the Regional Administrative Court (see paragraph 10 above) but predominantly relied on the use of “Lemilia” as her forename by her friends and family since birth as the grounds for her request and appeal. It appears from the decision of the Regional Administrative Court that only during the oral hearing the applicant stated that she wished to distance herself from her father, while the claims that he had been patriarchal, had forced the name “Özlem” on her and her mother and that the applicant did not know him except for one difficult childhood experience with him were first raised before the Constitutional Court (see paragraph 12 above). In the light of the late stage at which she referred to the difficult relationship she had had in the past with her father, from whom she was seeking to distance herself through the requested name change, and in view of the availability of a multitude of possible ways of achieving that goal aside from taking the forename “Lemilia” (compare *Stjerna*, cited above, § 44), the Court does not find it necessary to examine this aspect of the applicant’s argument any further.

44. As concerns the first interest relied on by the applicant, namely to bear the forename “Lemilia” which she identified with, the District Administrative Authority, the Regional Administrative Court and the Supreme Administrative Court reasoned that the forename chosen did not meet the conditions set out in the law. The District Administrative Authority concluded, after conducting research – consulting a linguistics institute – and hearing the applicant’s views on the matter, that the forename had never been registered in Austria, did not feature in the databases and encyclopaedia of forenames and was also not an Italian or Spanish forename (see paragraphs 7 and 9 above). The District Administrative Authority noted, by reference to the opinion of the consulted linguistics institute, that “Lemilia” was likely a combination of a definite article and the forename “Emilia” (see paragraph 7 above). The authorities did not find the evidence provided by the applicant – in particular, the copies of social media profiles under that name and the copy of a Brazilian driving licence (see paragraph 8 above) – pertinent or sufficient to prove that the name was common. The Court considers that the national authorities are in principle better placed to assess whether a forename

complies with the national naming practice and sees no reason to depart from the Austrian authorities' conclusion that the evidence provided was not sufficient to prove that the name was common.

45. The applicant's case rests on the expectation that a forename which did not comply with the Name Change Act would now be officially registered as her forename solely on the basis of her unofficial use of it for years. The Court is not convinced that in the present case Article 8 of the Convention created a positive obligation for the Austrian authorities to register a forename not in compliance with its national naming practice on the basis of the applicant's unofficial use of that forename. It notes that the particular circumstances of the present case are not comparable to those of the name change cases which previous case-law confirmed fell within the scope of a State's positive obligations (see paragraph 35 above). In the present case, the chosen name had not been recognised for the applicant in another jurisdiction (contrast to *Henry Kismoun* and the first applicant in *Aktaş and Aslaniskender*, see paragraph 35 above), nor was it argued that the authorities in the present case took issue with names in a foreign language (contrast to *Aktaş and Aslaniskender*, see paragraph 35 above). In this context, the Court also reiterates that the refusal to register a forename does not prevent its use by family and acquaintances (see *Guillot*, § 27; *Ismayilzade*, § 40; and *Salonen*, all cited above). In the light of the foregoing, the Court does not find that the particular circumstances of the applicant's case raise an issue of failure to respect private life under Article 8 of the Convention (see *Sijerna*, cited above, § 42; compare *Guillot*, § 27, and *Ismayilzade*, § 40, both cited above). The Court is of the opinion that the public-interest considerations relied on by the Government outweighed the interests referred to by the applicant and that a fair balance has therefore been struck in the present case.

46. While it is true, as argued by the applicant (see paragraph 26 above), that, similarly to the situation in *Johansson* (cited above), the name "Lemilia" only diverges from the name "Emilia" by one letter, the applicant's case must nevertheless be distinguished. Firstly, in *Johansson* (cited above), an important factor for the Court's conclusion was that the authorities had refused the forename "Axl" for the applicant's child although that name had been registered in Finland before and had already gained acceptance in that country (*ibid.*, §§ 33 and 38; see also *Ismayilzade*, cited above, § 41). Conversely, the forename "Lemilia" had, as argued by the Government (see paragraph 29 above) and not contested by the applicant, never been registered in Austria before and therefore did not enjoy acceptance there. As established by the domestic courts and the consulted linguistic experts, it was not even common in other languages, such as Italian or Spanish (see paragraph 44 above). Secondly, as opposed to Finland, where new names were legally permitted (see *Johansson*, cited above, § 37), Austrian law has always provided that only common forenames can be registered. The considerations

which led the Court to the finding of a violation of Article 8 of the Convention in *Johansson* (cited above) can therefore not be applied to the present case.

47. The Court notes that although the applicant submitted to the District Administrative Authority (see paragraph 8 above) that a refusal of her request would amount to a violation of her right to respect for private and family life, the District Administrative Authority did not examine the compliance of its refusal with that right or Article 8 of the Convention, but solely focused on the question whether the name chosen by the applicant qualified as “common” as required by section 3(1)(7) of the Name Change Act (see paragraphs 7 and 9 above). In the subsequent appeal proceedings, the Tyrol Regional Administrative Court noted that the applicant had always been called – and identified with – “Lemilia” and that she was seeking to distance herself from her father. It referred to those facts as “understandable” reasons for wanting to change her forename but considered them irrelevant in proving that the requested forename was “common” (see paragraph 11 above). In declining to deal with the applicant’s complaint, the Constitutional Court noted, with reference to its previous case-law (see paragraphs 13 and 21 above), that it was generally compatible with Article 8 of the Convention for the legislature to require a forename not to be freely invented but to have a real point of reference in the societal development of names, and to require that the pertinent use of that forename be proved either in Austria or abroad. Having regard to that case-law, it found in general that the legal requirement for every forename to be “common” was constitutional and therefore declined to deal with the applicant’s complaint on the grounds that it lacked any prospects of success. After that decision, the Supreme Administrative Court limited its examination to interpreting the meaning of the term “common” in section 3(1)(7) of the Name Change Act and concluded that the Tyrol Regional Administrative Court had sufficiently and correctly examined the applicant’s appeal (see paragraph 14 above).

48. The Court notes that in a case concerning the refusal of a request to change a forename it found a violation of Article 8 of the Convention because the national courts had neither taken into account the specific personal situation or arguments submitted by the applicant, nor balanced the interests at play (see *Güzel Erdagöz*, cited above, §§ 51-52). However, in that case, the Court concluded that no fair balance had been struck also because there had been no clearly defined legal basis for the restriction and no public interest justifying it and because no relevant and sufficient reasons had been given for the restriction (*ibid.*, §§ 50-55; see also paragraph 38 above). In the present case, however, the authorities referred to the lack of commonness of the forename “Lemilia”, which was an essential legal requirement and the cause for the refusal of the applicant’s request from the outset. They consulted databases to establish whether the forename was common in Austria and did not limit their research to Austria but extended it to other countries by consulting linguistic experts in the Italian and Spanish languages. The

explanatory notes to the draft laws (the Name Change Act and the Civil Status Act) and the case-law of the Constitutional Court (see paragraphs 18, 20 and 21 above) also explain that the requirement in question was introduced for the protection of public order, as well as to ensure that only forenames common for the identification of persons are registered, and the Court is satisfied that it is in the public interest (see paragraphs 41-42 above). The Court further attaches special weight to the fact that the Constitutional Court has emphasised in its case-law that the domestic courts must, when applying the conditions of the Name Change Act, interpret them in line with the Convention and take into account the identity-forming significance of the name for a person (see paragraph 21 above).

49. The Court thus concludes, having regard to the wide margin of appreciation enjoyed by the States in this sphere (see paragraphs 34 and 42 above) and the fair balance struck by the respondent State in the applicant's case (see paragraph 45 above), that the circumstances of the present case were not such as to give rise to an issue of failure to respect private life under Article 8 of the Convention.

50. In the light of the above-mentioned circumstances, the Court concludes that there has been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

51. The applicant complained of discrimination contrary to Article 14 taken in conjunction with Article 8 of the Convention, as persons born abroad with the name "Lemilia" would be permitted to bear and register that name in Austria. Article 14 of the Convention 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."

52. The Government argued that persons born abroad with the name "Lemilia" were not in circumstances comparable to those of the applicant. Other countries might allow the registration of freely invented names and Austrian naming laws were not applicable. Moreover, they argued that persons born abroad would likewise not be permitted to change their forename to "Lemilia" in Austria and that on that account they would not be treated differently.

53. The Court reiterates that in order for an issue to arise under Article 14 there must be, in the enjoyment of the rights and freedoms guaranteed by the Convention, a difference in the treatment of persons in analogous or relevantly similar situations (see *Molla Sali v. Greece* [GC], no. 20452/14, § 133, 19 December 2018). For the purposes of Article 14, a difference in 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. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that that difference was justified (*ibid.*, §§ 135 and 137).

54. The Court notes that, although the burden of proving a difference in treatment of persons in comparable situations is on the applicant (see paragraph 53 *in fine* above), she has not substantiated why persons born abroad who have had “Lemilia” registered as their forename under the naming laws of another jurisdiction would be in an analogous or relevantly similar situation to her, as she was born in Austria and was now seeking to adopt the forename “Lemilia” through a name change request in Austria. The Court also observes that naturalisation and name changes are two distinct procedures governed by different sets of laws. The Court thus agrees with the Government (see paragraph 52 above) that the applicant is not in a relevantly similar situation to those persons.

55. Consequently, this complaint is unsubstantiated and must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 3 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski
Deputy Registrar

Lado Chanturia
President