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

COURT (CHAMBER)

CASE OF STJERNA v. FINLAND

(Application no. 18131/91)

JUDGMENT

STRASBOURG

25 November 1994

In the case of Stjerna v. Finland*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A**, as a Chamber composed of the following judges:

Mr R. RYSSDAL, President,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr C. RUSSO,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr J.M. MORENILLA,
Mr L. WILDHABER,

and also of Mr H. PETZOLD, Acting Registrar,

Having deliberated in private on 21 June and 24 October 1994,

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

PROCEDURE

1. The case was referred to the Court on 9 September 1993 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 18131/91) against the Republic of Finland lodged with the Commission under Article 25 (art. 25) by a Finnish national, Mr Stjerna, on 11 March 1991.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Finland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 8 and 14 (art. 8, art. 14) of the Convention.

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* The case is numbered 38/1993/433/512. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr R. Pekkanen, the elected judge of Finnish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr L.-E. Pettiti, Mr N. Valticos, Mr B. Walsh, Mr I. Foighel, Mr J.M. Morenilla and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr C. Russo, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government of Finland ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 14 March 1994. In a letter of 7 April 1994 the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

5. On 25 March 1994 the President granted a request from the applicant not to disclose his first name.

6. Between 4 and 9 May 1994 the Commission produced various documents, as requested by the Registrar on the President's instructions.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 May 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr T. GRÖNBERG, Ambassador,
Director General for Legal Affairs, Ministry for Foreign Affairs, *Agent*,

Mr A. KOSONEN, Legal Adviser,
Ministry for Foreign Affairs, *Co-Agent*,

Mr Y. MÄKELÄ, Legal Adviser,
Ministry of Justice, *Adviser*;

- for the Commission

Mr H. DANELIUS, *Delegate*;

- for the applicant

Mr M. FREDMAN, asianajaja, advokat, *Counsel*.

The Court heard addresses by Mr Grönberg, Mr Danelius and Mr Fredman, and also the reply to a question put by one of its members.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

8. Mr Stjerna is a Finnish national and lives in Helsinki.

9. On 28 March 1989 he applied to the County Administrative Board (lääninhallitus, länsstyrelsen) of Uusimaa for permission to change his surname Stjerna (pronounced "Shaerna") to "Tawaststjerna". He maintained that his ancestors had used the proposed name and that he and other members of the Stjerna family had always felt it an injustice only to bear half of the original name. Moreover, the use of his surname gave rise to practical difficulties as it was an old Swedish form, was not well known and was difficult to pronounce. This meant that it was frequently misspelt (as "Stjärna", "Säärna", "Saarna", "Seerna", "Sierna", "Tierna" and "Stjerba").

10. In an opinion of 19 April 1989 submitted to the County Administrative Board, the Advisory Committee on Names (nimilautakunta, nämnden för namnärenden) opposed the change. It had not been shown that the proposed name had been used by his ancestors because the ancestor in question, Mr Fredrik Stjerna, had been born out of wedlock. The ancestors cited were too far back to satisfy the requirements of section 10 (2) of the 1985 Surnames Act (sukunimilaki 694/85, släktnamnslagen 694/85, see paragraph 17 below).

11. In the course of an exchange of views with the Advisory Committee on Names, on 14 June 1989 the applicant stated that his name had given rise to a pejorative nickname "kirnu" in Finnish derived from the Swedish word "kärna" ("churn"). Moreover, in his view, the remoteness of the ancestors in question could not be a ground for refusing to authorise the name change. Referring to a genealogical report, he disputed the allegation that Mr Magnus Fredrik Tawaststjerna was not the father of Mr Fredrik Stjerna.

12. On 25 October 1989 the Advisory Committee on Names recommended that the applicant's request be rejected; it considered the proposed name inappropriate. Although Mr Stjerna had cited a telling argument in support of his request - the obscure nature of his name - and was a descendant of a person named Tavaststjerna, his ancestor, who had died in 1773, was very far back and the suggested name would result in sources of inconvenience similar to his present name.

13. On 21 November 1989 the applicant told the Advisory Committee on Names that his mail was delayed as a result of his name being misspelt. In line with the spelling recommended by one of its members, he asked for his name to be changed to "Tavaststjerna" (as opposed to Tawaststjerna).

14. On 12 February 1990, on the basis of section 10 (2) of the Surnames Act, the County Administrative Board rejected the applicant's request for permission to change his name. It was not satisfied that the proposed name

had been used by his ancestors in such a way as to become "established", since the first one to bear his current name had been born out of wedlock. Since the proposed name had been used by ancestors who were very far back, it would not be appropriate to change his name to theirs.

15. The applicant appealed from the County Administrative Board’s decision to the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen), which, in a judgment of 14 November 1990, upheld the Board’s decision by four votes to one. It observed that it emerged from the written evidence that the applicant’s ancestor, Mr Fredrik Stjerna was born in 1764 and had been the illegitimate son of Mr Magnus Fredrik Tavaststjerna. For this reason alone the proposed name could not be considered to have been the "established" name of the applicant’s ancestors as required by section 10 (2) of the Surnames Act. In the light of this and the reasoning given by the Board there was no ground for altering the latter’s decision.

In the opinion of the minority the name Tavaststjerna had been the "established" name of the applicant’s ancestors. The fact that Fredrik Stjerna, the first of his ancestors to be called Stjerna, was born out of wedlock was irrelevant. In view of the inconvenience which the present surname was causing the applicant, the County Administrative Board’s decision should be quashed and the case referred back to it.

16. According to the Government a Finnish surname guide of 1984 listed approximately 7,000 which had fallen out of use and, in addition, some 2,000 names based on common Finnish nouns and place names.

II. RELEVANT DOMESTIC LAW AND COMPARATIVE LAW

A. Finnish legislation

1. Name changes

17. Section 10 of the Surnames Act provided that a surname may be changed on the condition that the person concerned could show:

> "(1) that the use of his current surname causes inconvenience because of its foreign origin, its meaning in common usage or its common occurrence or for any other reason;
>
> (2) that the proposed surname has previously been used by himself or in an established way (vakiintuneesti, hävdvunnen) by his ancestors and the name change may be considered appropriate; or
>
> (3) that a change of surname may be considered justified by changed circumstances or by any other special reasons."

18. Section 11 of the 1985 Act contained provisions on obstacles of a general character to authorising changes of surname. A new surname was not to be improper or otherwise one the use of which would be manifestly inconvenient. Save in particular circumstances, the new surname should not by virtue of its form or spelling be incompatible with domestic name practice (paragraph 1); or be a name very commonly used as a surname (paragraph 2); or be commonly used as a christian name (paragraph 3).

A surname which was well known as the name of a particular Finnish or foreign family could not, unless there were particular reasons for doing so, be approved as a new surname (section 12 (1)).

19. Pursuant to section 13 (2) (1) (which contained provisions on "particular reasons for permitting a new surname"), a new surname falling foul of the restrictions in sections 11 (2) or 12 could nevertheless be permitted if the person requesting the name change showed that the surname in question had previously and lawfully been used by him or his ancestors.

20. If the County Administrative Board, after the Advisory Committee on Names had given its opinion, found no grounds under sections 10 to 13 for refusing to authorise an application for a change of surname, the application was published in the Official Gazette (section 18).

21. A person who claimed that the granting of an application for a change of surname would be incompatible with section 12 and would infringe his or her rights could, under section 19, file an objection with the County Administrative Board within thirty days from the date of the above-mentioned publication. An objection submitted after expiry of this time-limit could be taken into account in the examination of the application unless the matter had already been decided.

22. If the County Administrative Board rejected the application, its reasons were to be stated in the decision (section 20 (2)).

A decision on an application for a change of surname was to be notified to the applicant and also to any person who has filed objections under section 19 (section 21) and could be the subject of an appeal by them (section 22) to the Supreme Administrative Court.

23. In 1991 the provisions concerning first names were included by Act 253/91 in the 1985 Surnames Act, which was then retitled the Names Act (nimilaki, namnlagen).

2. Population registration

24. Population registration was effected at national and local level.

Population registration was administered, at national level, by the Population Register Centre (chapter 3, section 8 of the 1970 Act on Population Registers - västökirjalaki 141/69, lag 141/69 om befolkningsböcker) and, at local level, by the evangelical-lutheran and orthodox parishes or, for persons who were not members of such parishes, by the local registration office (chapter 2, sections 3, 6 and 26).

25. The national register, which was updated five times a week, contained the names and personal identity numbers of the persons registered and also other information, making it possible to trace by electronic data processing a person’s name and address, even if the name or identity number did not appear on the register. Only public authorities had direct access to the register (see Le système d’information de l’état civil finlandais, Journée internationale de l’état civil, published in 1992 by the Commission internationale de l’état civil - "International Commission on Civil Status").

26. The Centre established a personal identity number for every person registered, consisting of the person’s date of birth, an individual number, and a control number (sections 4 and 5 of the 1970 Decree on Population Registers - väestökirja- asetus 198/70, förordning 198/70 om befolkningsböcker).

27. If the County Administrative Board or, on an appeal, the Supreme Administrative Court, authorised a change of name, it had to inform the Centre of the new name (section 8 (1) of the 1991 Names Decree (nimiasetus 254/91, namnförordning 254/91)). The authority which gave permission for the name change had to be specified in the register (section 7 (4) of the 1970 Decree).

28. As from 1 November 1993, the 1970 Act and the 1970 Decree were replaced by the 1993 Act on Population Data (väestötietolaki 507/1993, befolkningsdatalag 507/1993) and the 1993 Decree on Population Data (väestötietoasetus 886/1993, befolkningsdataförordning 886/1993).

B. Comparative law

29. Under the legislation on names in the twelve member States of the International Commission on Civil Status, all members of the Council of Europe, the possibility of a person to change his or her name is subject to certain conditions. In Belgium, Portugal and Turkey, any reason may be invoked in support of a request for a change of name. In France, Germany, Luxembourg and Switzerland the reasons must be convincing ones. In some countries specific reasons are required: for instance that the current name gives rise to pronunciation and spelling difficulties (Austria) or causes legal or social difficulties (Austria and Greece) or is contrary to decency (the Netherlands and Spain), or is ridiculous (Austria, Italy and the Netherlands) or is otherwise contrary to the dignity of the person concerned (Spain) (see the International Commission’s Guide pratique international de l’état civil, Paris).

Name changes are noted in population records, at the request of the interested person (Belgium and France) or of a public authority (France), or are done so automatically (the other ten members of the International Commission).

30. Under English law a person is entitled to adopt a surname of his own choosing and to use this name without any restrictions or formalities, except in connection with the practice of some professions (Halsbury's Laws of England, 4th ed., vol. 35, paras. 1173-76). The new name is valid for purposes of legal identification, may be used in public documents and is entered on the electoral roll (Cossey v. the United Kingdom judgment of 27 September 1990, Series A no. 184, p. 9, para. 16). The United Kingdom has no civil status certificates or equivalent current identity documents (ibid., para. 17). The near absence in English law of formalities governing changes of name has not resulted in a large number of changes (Margaret Killerby, 'Précisions sur le droit anglais du nom', pp. 183-84, in La nouvelle loi sur le nom, Paris, 1988).

PROCEEDINGS BEFORE THE COMMISSION

31. In his application of 11 March 1991 (no. 18131/91) to the Commission, Mr Stjerna complained that the refusal by the Finnish authorities to grant his request for a change of surname violated his right to respect for private life under Article 8 (art. 8) of the Convention. He also relied on Article 14 (art. 14) (prohibition of discrimination).

32. On 29 June 1992 the Commission declared the application admissible. In its report of 8 July 1993 (Article 31) (art. 31), the Commission expressed the opinion that there had been no violation of either Article 8 (art. 8) (by twelve votes to nine) or Article 14 in conjunction with Article 8 (art. 14+8) (unanimously). The full text of the Commission's opinion and of the separate opinions contained in the report is reproduced as an annex to this judgment[*].

FINAL SUBMISSIONS TO THE COURT

33. At the hearing on 25 May 1994 the Government invited the Court to hold that, as contended in their memorial, there had been no violation of the Convention in the present case.

The applicant confirmed the submissions set out in his memorial to the effect that the facts of his case gave rise to violations of Article 8 (art. 8) taken alone and together with Article 14 (art. 14+8). He also reiterated his claim for compensation under Article 50 (art. 50).

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[*] Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 299-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

34. The applicant alleged that the refusal by the Finnish authorities to allow him to change his surname to Tavaststjerna, constituted a breach of Article 8 (art. 8) of the Convention, which reads:

> "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."

35. The Government and the Commission took the contrary view.

A. Scope of the issues before the Court

36. In his application, as declared admissible by the Commission, the applicant claimed that the impugned refusal amounted to a breach of Article 8 (art. 8) under the head of "private life", on account of the fact that his current name gave rise to practical difficulties and a pejorative nickname and in view of his links to the Tavaststjerna family.

Before the Court he further submitted that he wished to change his surname in order to avoid a former colleague who had subjected him to threats and harassment. However, this argument was not raised before the Commission and is in any event unsubstantiated. Accordingly, the Court will limit its examination to the facts of his application as declared admissible by the Commission (see, for instance, the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 30-31, para. 75).

B. Applicability of Article 8 (art. 8)

37. The Court notes that Article 8 (art. 8) does not contain any explicit reference to names. Nonetheless, since it constitutes a means of personal identification and a link to a family, an individual’s name does concern his or her private and family life (Burghartz v. Switzerland judgment of 22 February 1994, Series A no. 280-B, p. 28, para. 24). The fact that there may exist a public interest in regulating the use of names is not sufficient to remove the question of a person’s name from the scope of private and family life, which has been construed as including, to a certain degree, the right to establish relationships with others (ibid.).

The subject-matter of the complaint thus falls within the ambit of Article 8 (art. 8).

C. Compliance with Article 8 (art. 8)

38. The refusal of the Finnish authorities to allow the applicant to adopt a specific new surname cannot, in the view of the Court, necessarily be considered an interference in the exercise of his right to respect for his private life, as would have been, for example, an obligation on him to change surname. However, as the Court has held on a number of occasions, although the essential object of Article 8 (art. 8) is to protect the individual against arbitrary interferences by the public authorities with his or her exercise of the right protected, there may in addition be positive obligations inherent in an effective "respect" for private life.

The boundaries between the State's positive and negative obligations under Article 8 (art. 8) do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (see, for instance, the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, para. 49).

39. Despite the increased use of personal identity numbers in Finland and in other Contracting States, names retain a crucial role in the identification of people. Whilst therefore recognising that there may exist genuine reasons prompting an individual to wish to change his or her name, the Court accepts 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 and of linking the bearers of a given name to a family.

In this connection it is to be noted that in a number of Contracting States a request to change one's name must be supported by convincing or specific reasons whereas in other States any reasons may be invoked (see paragraph 29 above) and in one State there are in principle no restrictions (see paragraph 30 above). 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. The Court deduces that in the particular sphere under consideration the Contracting States enjoy a wide margin of appreciation. The Court's task is not to substitute itself for the competent Finnish authorities in determining the most appropriate policy for regulating changes of surnames in Finland, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see, for instance, the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 20, para. 55; and, mutatis mutandis,

the Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 23, para. 49).

40. Before the Court the applicant maintained that the use of his current surname caused him inconvenience. It was an old and uncommon Swedish name and, in any case, the Swedish-speaking people in Finland amounted to only some six per cent of the population and resided mainly in the coastal regions. Although Swedish names were not unusual in Finland, his name, starting with a combination of three consonants - "stj" - , was exceptionally difficult for a non-Swedish-speaking Finnish person to spell and pronounce. His mail was delayed as a result of his name being misspelt and the name had given rise to a pejorative nickname: "kirnu" in Finnish, derived from the Swedish word "kärna" ("churn" in English). He argued that decisive weight should be given to the fact that he himself resented these sources of inconvenience. The proposed name, Tavaststjerna, although in many ways similar to Stjerna, would not give rise to the same problems; it was more common and better known in the region in which he lived and could not easily be turned into a pejorative nickname.

Secondly, the applicant reiterated his principal contention to the Finnish authorities, namely that, in line with the Finnish tradition of choosing names, he had opted for a surname borne by a paternal ancestor. Tavaststjerna was the only surname satisfying that tradition and differing from his present surname. The strength of his relationship to the Tavaststjerna family was primarily a matter to be assessed by himself. Particular importance should therefore be attached to the fact that, in his view, the period of approximately one hundred and sixty years between the death of the last ancestor named Tavaststjerna and his own birth was not long enough to sever the bonds linking him to that family and his sense of belonging to it.

The refusal by the Finnish authorities to permit him to change his surname to Tavaststjerna was not aimed at protecting the interests of that family; in any event such considerations were irrelevant since the applicant was a direct descendant of a Tavaststjerna. Nor could the decisions of refusal be justified on the ground of population registration requirements in Finland, as identity numbers are now used for this purpose. In this connection, the applicant argued that the 1985 Act afforded excessive protection to names in use. The refusal meant that he was forced either to continue using his inconvenient surname or to take a new one that he did not like.

41. The Government and the Commission were of the view that the refusal to let him change his surname to Tavaststjerna did not constitute a lack of respect for his right to private life, mainly on the grounds that the inconvenience suffered by the applicant due to his current name was not significant enough and that his connection to the requested name Tavaststjerna was too remote.

42. As to the instances of inconvenience complained of by the applicant, the Court is not satisfied on the evidence adduced before it that the alleged difficulties in the spelling and pronunciation of the name can have been very frequent or any more significant than those experienced by a large number of people in Europe today, where movement of people between countries and language areas is becoming more and more commonplace.

In any event, in the view of the Advisory Committee on Names, the use of the name Tavaststjerna involved similar practical difficulties to those associated with Stjerna (see paragraph 12 above). In this connection the Court considers that the national authorities are in principle better placed to assess the level of inconvenience relating to the use of one name rather than another within their national society and, in the present case, no sufficient grounds have been adduced to justify the Court coming to a conclusion different from that of the Finnish authorities.

Finally, although the applicant’s current name may have given rise to a pejorative nickname, this was not a specific feature of his name since many names lend themselves to distortion.

In the light of the foregoing, the Court does not find that the sources of inconvenience the applicant complained of are sufficient to raise an issue of failure to respect private life under paragraph 1 (art. 8-1).

43. As to the applicant’s attachment to the proposed name, the Court observes that the last ancestor who bore that name died more than two hundred years before the applicant applied to acquire the name. Notwithstanding the applicant’s own feelings about being a descendant of the ancestors in question, the latter lived so far back in time that no significant weight can be given to those links for the purposes of paragraph 1 of Article 8 (art. 8-1).

44. In addition, as pointed out by the Government, had the applicant been willing to invent a new name for himself or identify a name not already in use, he would have had a multitude of possibilities (see paragraph 16 above).

45. In view of these circumstances the Court, like the Commission and the Government, finds that the refusal by the Finnish authorities to allow the applicant to change his surname from Stjerna to Tavaststjerna did not constitute a lack of respect for his private life within the meaning of Article 8 (art. 8) of the Convention. Accordingly, there has been no violation of that Article (art. 8).

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 8 (art. 14+8)

46. The applicant further alleged that the impugned refusal constituted a breach of Article 14 of the Convention taken together with Article 8 (art. 14+8). Article 14 (art. 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."

47. The Government and the Commission disagreed.

48. In view of its findings in paragraph 37 above, the Court holds that Article 14 (art. 14) applies to the present case (see, amongst many authorities, the Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

For the purposes of Article 14 (art. 14), 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 (ibid., p.18, para. 41).

49. The applicant complained of the fact that, when rejecting his request for a change of surname, the County Administrative Board had mentioned in its reasoning that Mr Fredrik Stjerna, the first ancestor who bore the applicant's surname, had been the illegitimate son of Mr Magnus Fredrik Tavaststjerna, the last ancestor to bear the proposed surname. This fact, which was taken from the opinion of the Advisory Committee on Names, was also invoked by the Supreme Administrative Court, as was shown by the opinion of the dissenting judge who dismissed it as irrelevant. The refusal to let him take the name Tavaststjerna was thus based on discriminatory grounds incompatible with Article 14 (art. 14), namely his "social origin, ... birth or other status".

50. According to the Government and the Commission the applicant's allegation was unsubstantiated; the fact that the ancestor in question had been born out of wedlock had not been decisive for the impugned refusal.

51. The Court is not convinced that the applicant was subjected to discriminatory treatment. The references made in the relevant decisions to the fact that one of his ancestors was born out of wedlock explain why Fredrik Stjerna was not named Tavaststjerna but does not appear to have had any bearing on the impugned refusal. There is nothing to suggest that the Finnish authorities would have arrived at different decisions had the ancestor been a "legitimate" child who had for some other reason taken the name Stjerna.

The reason for refusing his request seems rather to have been the fact that the name Tavaststjerna had not been in use in the applicant's family for more than two hundred years and could not therefore be said to have been in "established" use in the family, a condition for acquisition of a surname under section 10 (2) of the 1985 Act (see paragraphs 15 and 17 above). It is not contended that the latter reason was discriminatory within the meaning of Article 14 (art. 14) and, on the evidence before it, the Court has no cause to hold that it was. In short, the justification advanced by the Government appears objective and reasonable.

Having regard to the above, the Court concludes that there has been no violation of Article 14 taken together with Article 8 (art. 14+8).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 8 (art. 8) of the Convention is applicable in the present case;

2. Holds that there has been no violation of Article 8 (art. 8) of the Convention;

3. Holds that there has been no violation of Article 14 of the Convention taken together with Article 8 (art. 14+8).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 November 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the concurring opinion of Mr Wildhaber is annexed to this judgment.

R. R
H. P.

CONCURRING OPINION OF JUDGE WILDHABER

Paragraph 38 of the Court's judgment in the instant case reiterates an established but still somewhat incoherent jurisprudence. On a number of occasions the Court has stated that the "essential object" of Article 8 (art. 8) is "to protect the individual against arbitrary interference by the public authorities"[1]. It has reserved the term "interference" for facts capable of infringing the State's negative obligations. Whenever it has found that an interference in this sense existed, the Court has examined whether the interference could be justified under paragraph 2 of Article 8 (art. 8-2). In addition, the Court has acknowledged that there could be positive obligations inherent in an effective respect for private and family life. The existence of such positive obligations must be evaluated having regard to "the fair balance that has to be struck between the general interest of the community and the interests of the individual"[2]. To this it has added rather vaguely that in the sphere of positive obligations "the aims mentioned in the second paragraph of Article 8 (art. 8-2) may be of a certain relevance"[3]. But the Court has in effect applied only the first paragraph (art. 8-1) in such instances. Moreover, it has stressed that Contracting States enjoy a wide margin of appreciation in the implementation of their positive obligations.

However, the dividing line between negative and positive obligations is not so clear-cut. In the Gaskin case, the refusal by the British authorities to grant a former child in care unrestricted access to child-care records could be considered as a negative interference, whereas a duty on the State to

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[1] Belgian Linguistic judgment of 23 July 1968, Series A no. 6, p. 33, para. 7; Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 15, para. 31; Airey v. Ireland judgment of 9 October 1979, Series A no. 32, p. 7, para. 32; X and Y v. the Netherlands judgment of 26 March 1985, Series A no 91, p. 11, para. 23; Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985, Series A no. 94, pp. 33-34, para. 67; Rees v. the United Kingdom judgment of 17 October 1986, Series A no. 106, p. 14, para. 35; Johnston and Others v. Ireland judgment of 18 December 1986, Series A no. 112, p. 25, para. 55 (c); Leander v. Sweden judgment of 26 March 1987, Series A no. 116, p. 23, para. 51; W., B. and R. v. the United Kingdom judgments of 8 July 1987, Series A no. 121, respectively p. 27, para. 60, p. 72, para. 61, p. 117, para. 65; Gaskin v. the United Kingdom judgment of 7 July 1989, Series A no. 160, p. 15, para. 38; Niemitz v. Germany judgment of 16 December 1992, Series A no. 251-B, p. 34, para. 31; Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, para. 49; Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 20, para. 55.

[2] Rees v. the United Kingdom judgment of 17 October 1986, Series A no. 106, p. 15, para. 37; Gaskin v. the United Kingdom judgment of 7 July 1989, Series A no. 160, p. 17, para. 42; Cossey v. the United Kingdom judgment of 27 September 1990, Series A no. 184, p. 15, para. 37; and similarly Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 18, para. 41; B. v. France judgment of 25 March 1992, Series A no. 232-C, pp. 47, 53-54, paras. 44 and 63; Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 20, para. 55.

[3] Rees judgment, p. 15, para. 37; Gaskin judgment, p. 17, para. 42; Powell and Rayner judgment, p. 18, para. 41; note 2 above.

provide such access could arguably be viewed as a positive obligation. In the Cossey case the claim of the applicant, an operated transsexual, was that she should be issued with a fresh birth certificate showing her present sex rather than her sex at the date of birth. The refusal of the United Kingdom to carry out a modification of its system for recording civil status could be analysed either as a negative interference with the applicant's rights or as a violation of the State's positive obligation to adapt its legislation so as to take account of the applicant's situation. The Keegan case against Ireland concerned the placement of a child for adoption without the natural father's knowledge or consent, a measure permitted under Irish law. This state of affairs could be taken as a negative interference with the father's right to respect for his family life or as a failure by Ireland to fulfil a positive obligation to confer a right of guardianship on natural fathers. Again, in the instant case of Stjerna, the refusal by the Finnish authorities to allow the applicant freely to acquire the surname of his ancestors may be perceived as either a negative or a positive interference.

In my view, it would therefore be preferable to construe the notion of "interference" so as to cover facts capable of breaching an obligation incumbent on the State under Article 8 para. 1 (art. 8-1), whether negative or positive. Whenever a so-called positive obligation arises the Court should examine, as in the event of a so-called negative obligation, whether there has been an interference with the right to respect for private and family life under paragraph 1 of Article 8 (art. 8-1), and whether such interference was "in accordance with the law", pursued legitimate aims and was "necessary in a democratic society" within the meaning of paragraph 2 (art. 8-2).

To be sure, this approach would not lead to a different result in the instant case, nor in all likelihood in the vast majority of cases of this kind. It does, however, have the advantage of making it clear that in substance there is no negative/positive dichotomy as regards the State's obligations to ensure respect for applicable private and family life, but rather a striking similarity between the applicable principles[4].

[4] As stated in the Keegan v. Ireland judgment, p. 19, para. 49; and the Hokkanen v. Finland judgment, p. 20, para. 55; note 2, previous page.