

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

FIRST SECTION

# CASE OF ISMAYILZADE v. AZERBAIJAN

*(Application no. 17780/18)*

JUDGMENT

Art 8 • Private and family life • Refusal to register forename chosen by applicant for her newborn child • Applicant's complaint heard before three levels of courts • Reasoned judgments • Wide margin of appreciation • In case circumstances no grounds to question domestic authorities' conclusions and inconvenience insufficient to conclude lack of respect for applicant's Art 8 rights

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 January 2024

**FINAL**

24/06/2024

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



**In the case of Ismayilzade v. Azerbaijan,**

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

Marko Bošnjak*, President*,
Alena Poláčková,
Lətif Hüseynov,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 17780/18) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Ms Leyla Miryagub gizi Ismayilzade (*Leyla Miryaqub qızı İsmayılzadə* - "the applicant"), on 30 March 2018;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaint under Article 8 of the Convention and to declare remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 11 November 2023 and 5 December 2023,

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

# INTRODUCTION

1. The present case concerns the refusal of the domestic authorities to register the forename chosen by the applicant for her newborn child and raises an issue under Article 8 of the Convention.

# THE FACTS

2. The applicant was born in 1990 and lives in Baku. She was represented before the Court by Mr Y. Imanov, a lawyer based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 28 September 2016 the applicant applied to the Yasamal District Registration Department ("the Registration Department"), which is part of the Ministry of Justice, asking to register "*Əbülfəzlabbas*" as the forename of her son born on 25 July 2016 (a copy of the request has not been submitted to the Court). On 3 October 2016 the applicant's request was refused (a copy of the refusal has not been submitted to the Court).

6. On 13 October 2016 the applicant made another request asking to register her son's forename as "*Əbülfəzl Abbas*". That request was also rejected. When rejecting the applicant's request, the relevant authority relied on Article 21 of the Constitution, Article 26.1 of the Civil Code and Article 8 of the Law on State Language (see paragraphs 14, 16 and 20 below). It also added that the above-mentioned forename did not appear on the list of names recommended by the Azerbaijani National Sciences Academy ("the ANSA").

7. On 31 October 2016 the applicant brought proceedings against the Registration Department and asked the Baku Administrative-Economic Court No. 1 to oblige it to register the forename "*Əbülfəzlabbas*" as the forename of her son. She made reference to several provisions of domestic law, including Article 32 of the Constitution, Articles 53.1 and 53.2 of the Family Code, rules 1.4 and 1.5 of the Rules on granting and changing forename, patronymic and surname ("the Rules"), as approved by the decision of the Cabinet of Ministers (see paragraphs 15, 17 and 21-22 below), and Article 8 of the Convention and argued that the fact that the forename in question did not appear on the ANSA's list was not conclusive, as that list was of an advisory nature. It appears from the case file that the child's father, a religious leader who had established an unregistered religious movement called "*Müsəlman Birliyi*", and who was at the relevant time detained at the Baku pre-trial detention facility on a number of serious charges (including intentional murder, illegal acquisition, storage and carrying of weapons, incitement of national, racial or religious hostility by using or threatening to use violence and others), sent a letter to the first-instance court informing it that he consented to the child being named "*ƏbülfəzlAbbas*" (a copy of the letter has not been submitted to the Court).

8. On 28 March 2017 the first-instance court, referring to, among other provisions, Article 26.1 of the Civil Code and rule 1.4 of the Rules, dismissed the applicant's claim, holding principally that the suggested forename, be it written as "*Əbülfəzlabbas*", "*ƏbülfəzlAbbas*" or "*Əbülfəzl Abbas*", was not in the child's best interests owing to its pronunciation.

9. On 4 May 2017 the applicant made a request to the same authority to register the forename "*Abbas*" for her son (a copy of the request has not been submitted to the Court). The request was granted on 10 May 2017.

10. On 26 May 2017 the applicant appealed against the first-instance court's judgment, arguing that the forename that had been refused did not fall under any of the categories of rule 1.4 of the Rules and that the first-instance court had failed to give reasons as for why it found the pronunciation of the forename not to be in the child's best interests.

11. By a judgment of 16 August 2017, the Baku Court of Appeal dismissed the applicant's appeal, holding that the Registration Department had acted within its discretionary powers and that it had given reasons for its refusal to register the requested forename.

12. On 22 September 2017 the applicant lodged a cassation appeal. In addition to her previous arguments (see paragraphs 7 and 10 above), the applicant submitted that she and her spouse followed the Shia branch of Islam and that the forename they had chosen for their son was related to the name of a historical figure in Islam and was widespread in countries where the Shia branch was dominant. She argued that therefore their wish to name their son "*Əbülfəzlabbas*" was "completely natural". She further argued that the appellate court had failed to show that that name conflicted with the phonetics or pronunciation of the Azerbaijani language or with its syntax.

13. On 29 November 2017 the Supreme Court dismissed the applicant's cassation appeal as unfounded. It held, in particular, that since the forename "*Abbas*" had already been registered as the forename of the applicant's son on 10 May 2017 at her request, the child's rights under Article 26.1 of the Civil Code and Article 53.1 of the Family Code, as well as the parents' rights under Articles 53.2 and 166.2 of the Family Code (see paragraphs 16, 17 and 19 below), had been respected. The court therefore decided that the applicant's claim, which no longer concerned the naming of the child but changing a forename that had already been registered, could not be granted. Referring to Article 54.1 of the Family Code (see paragraph 18 below), it added that changing the forename of a minor child was allowed with the consent of the custody and guardianship authority at the request of both parents, while taking into account the child's best interests.

## RELEVANT LEGAL FRAMEWORK

### I. THE 1995 CONSTITUTION

14. Article 21 of the Constitution provides that the State language of the Republic of Azerbaijan is the Azerbaijani language.

15. Article 32 of the Constitution prohibits interference with private or family life, except as provided for by law, and provides that everyone has the right to be protected from unlawful interference with his or her private and family life.

### II. THE 2000 CIVIL CODE

16. Article 26.1 of the Civil Code provides that every physical person has a right to have a name comprising a forename, patronymic and surname.

### III. THE 2000 FAMILY CODE

17. Articles 53.1 and 53.2 of the Family Code provide that a child has a right to have a forename, patronymic and surname, and that the name given to a child is based on the parents' consent.

18. Article 54.1 of the Code provides that the relevant executive authority (custody and guardianship authority) may allow the change of the name of a child under the age of 18 at the parents' joint request and taking into account the child's best interests.

19. Article 166.2 of the Code provides that the birth of a child may be registered by the relevant executive authority at the request of one or both parents.

### IV. THE LAW ON STATE LANGUAGE OF 30 SEPTEMBER 2002

20. Article 8 of the Law on State Language provides that the forenames, patronymics and surnames of citizens must be written in the State language in official documents.

### V. RULES ON GRANTING AND CHANGING FORENAME, PATRONYMIC AND SURNAME, APPROVED BY DECISION OF THE CABINET OF MINISTERS OF 12 MAY 2011

21. Rule 1.4 of the Rules provides that a name which may harm the child's interests or which does not match the child's gender or would lay the child open to ridicule will not be allowed.

22. Rule 1.5 of the Rules provides that a registration authority's decision refusing to register a name or to change it can be challenged before the courts.

## THE LAW

### ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that the domestic authorities' refusal to register the forename that she had chosen for her son had violated her right to respect for her private and family life. She relied on Article 8 of the Convention, which reads as follows:

> "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. Admissibility

24. The Government did not contest the applicability of Article 8 of the Convention to the present case. The applicant submitted that the present application fell within the scope of Article 8 of the Convention.

25. The Court has already held that the choice of a child's forename by the parents is a personal and emotional matter and therefore comes within their private sphere (see *Guillot v. France*, 24 October 1996, § 22, *Reports of Judgments and Decisions* 1996-V, and *Johansson v. Finland*, no. 10163/02, § 28, 6 September 2007). Article 8 is thus applicable in the present case.

26. It further notes that this 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.

## B. Merits

### *1. The parties' submissions*

27. The applicant submitted similar arguments to those put forward in her appeals before the domestic courts (see paragraphs 7, 10 and 12 above). In addition, she argued that the registration of her son's forename as "*Abbas*" caused "some troubles for her as a parent" and made her "feel anxious every day". She submitted that she called her son "*Əbülfəzlabbas*", but in connection with "any documentation and formality" she had to "explain the difference between the *de facto* and *de jure* name of her son".

28. The applicant also submitted that she had explained in her request of 4 May 2017 that she had had to register the child with the forename "*Abbas*" because she had needed to take him abroad for medical treatment. She provided copies of relevant pages from the child's passport showing that the child had been taken to Iran on 31 October and 18 November 2017, but no information or documents concerning the alleged medical treatment was submitted.

29. The Government submitted that the refusal by the domestic authorities to register the chosen forename had pursued the legitimate aims of preserving the national naming practice and protecting a child from unsuitable names. They accepted that the forename in question was not eccentric or excessively whimsical but argued that the sounds in that forename were not characteristic for the Azerbaijani language, making its pronunciation difficult, and that therefore the registration of such a "new and difficult" name would be likely to harm the interests of the child. The Government also submitted that the forename in question had never previously been registered.

### *2. The Court's assessment*

#### (a) General principles

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

The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The Court has held that not all regulation of names will necessarily constitute an interference. While it is true that an obligation to change one's name would be regarded as an interference, the refusal to allow an individual to adopt a new name cannot necessarily be considered an interference. The applicable principles are nonetheless similar. In particular, in both contexts regard must be had to the fair balance which has to be struck between the competing interests (see *Johansson*, cited above, § 29; *Golemanova v. Bulgaria*, no. 11369/04, §§ 38-39, 17 February 2011; and *Garnaga v. Ukraine*, no. 20390/07, § 37, 16 May 2013).

31. The Court reiterates that in weighing up the different interests at stake, consideration should be given, on the one hand, to the applicant's right to choose a forename for her child, and on the other hand, the public interest in regulating the choice of names (compare *Heidecker-Tiemann v. Germany* (dec.), no. 31745/02, 6 May 2008, and *Kyazim v. Bulgaria*, no. 39356/17, § 29, 16 November 2021). With regard to the public interest, the Court has previously accepted that due regard has to be given to the child's interests and that the protection of the child from an unsuitable name (such as ridiculous or whimsical names) is in the public interest. The Court has also accepted that the preservation of national naming practice may be considered to be in the public interest (see *Johansson*, cited above, § 36).

32. The Court further reiterates that its task is not to substitute itself for the competent domestic authorities in determining the most appropriate policy for regulating names in a State, but rather to review under the Convention whether the domestic authorities' refusal to register the forename in question in the present case is capable of amounting to an infringement of the applicant's rights guaranteed by Article 8 of the Convention (compare *Stjerna v. Finland*, 25 November 1994, § 39, Series A no. 299-B; *Mentzen v. Latvia* (dec.), no. 71074/01, ECHR 2004-XII; *Henry Kismoun v. France*, no. 32265/10, § 28, 5 December 2013; and *Künsberg Sarre v. Austria*, nos. 19475/20 and 3 others, § 53, 17 January 2023).

33. The process whereby surnames and forenames are given, recognised and used is a domain in which national particularities are the strongest and in which there are virtually no points of convergence between the internal rules of the Contracting States. This domain reflects the great diversity between the Member States of the Council of Europe. In each of these countries, the use of names has been influenced by a multitude of factors of an historical, linguistic, religious and cultural nature, so that it is extremely difficult, if not impossible, to find a common denominator. The margin of appreciation which the State authorities enjoy in the sphere under consideration is wide (see *Bulgakov v. Ukraine*, no. 59894/00, § 43, 11 September 2007, and *Jacquinet and Embarek Ben Mohamed v. Belgium*, no. 61860/15, §§ 52 and 54, 7 February 2023).

34. The Court also reiterates that while Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, among other authorities, *Golemanova*, § 40, and *Jacquinet and Embarek Ben Mohamed*, § 57, both cited above).

**(b) Application of those principles to the present case**

35. In the present case, the Registration Department refused to register the forename chosen by the applicant, citing several provisions of domestic law. The first-instance court also referred to certain legal provisions and held that the forename in question was not in the child's best interests (see paragraphs 6 and 8 above; contrast *Johansson*, cited above, § 33, and *Güzel Erdagöz v. Turkey*, no. 37483/02, § 51, 21 October 2008; and compare *Salonen v. Finland*, no. 27868/95, Commission decision of 2 July 1997, and *Kemal Taşkın and Others v. Turkey*, nos. 30206/04 and 7 others, § 53, 2 February 2010).

36. The Court notes that following the judgment of the first-instance court the applicant made a request for the forename "*Abbas*" to be registered as her son's forename, which was granted by the relevant authority (see paragraph 9 above). However, despite the registration of that forename, the applicant lodged an appeal against the first-instance court's judgment, which the Baku Court of Appeal dismissed on the basis of reasons similar to those given by the lower court (see paragraph 11 above).

37. The applicant then lodged a cassation appeal, arguing, for the first time, that the forename "*Əbülfəzlabbas*" was linked to her religious beliefs and that it did not contradict the features of the Azerbaijani language (see paragraph 12 above). However, since the forename "*Abbas*" had already been registered as the child's forename at the applicant's own request, the Supreme Court dismissed the applicant's cassation appeal mainly on that ground (see paragraph 13 above).

38. In her observations before the Court, the applicant submitted that she had had to register the forename "*Abbas*" as her son's forename because she needed to take him to Iran for a medical examination. However, it does not appear from the case file that the applicant ever mentioned that argument, either in her appeals to the appellate and cassation courts or during the hearing in the appellate court, even though, as already mentioned above, the child's forename had been registered as "*Abbas*" following the judgment of the first-instance court. Moreover, while she provided the Court with a copy of the child's passport showing the dates of two trips to Iran, no information or documents concerning the medical examination were submitted. Nor has she provided the Court with a copy of her request of 4 May 2017 addressed to the relevant registration authority in which she claimed that she had explained that situation (see paragraph 28 above).

39. In the present case, the applicant, represented by a lawyer, was able to bring her complaint before three levels of courts, which examined her claims and gave reasons for their judgments. As mentioned above, while the first-instance and appellate courts held that the forename in question was not in the child's best interests (see paragraphs 8 and 11 above), the Supreme Court dismissed the applicant's cassation appeal holding mainly that the child had already been given a forename, and indicated the relevant procedure for requesting a change of that name (see paragraphs 13 and 37 above). Before the Court, the applicant has not explained why she continued to pursue the proceedings in question instead of using the relevant procedure for changing the already registered forename of her child, nor has she argued that such course of action would not be appropriate in her situation (compare *Bulgakov*, cited above, §§ 52-53). In these circumstances and in the absence of any substantiated arguments to the contrary, as well as having regard to the wide margin of appreciation enjoyed by the States in this sphere (see paragraph 33 above), the Court finds no grounds to question the conclusions reached by the domestic authorities (compare *Golemanova*, cited above, § 45).

40. As to certain "troubles" referred to by the applicant as resulting from the domestic authorities' refusal to register the forename of her choice (see paragraph 27 above), the Court firstly observes that they have not been raised in the domestic courts. It further observes that the refusal to register the forename in question does not prevent the applicant from using that forename. Therefore, in the specific circumstances of the present case, the inconvenience relied on by the applicant is not sufficient to lead the Court to conclude that there has been a lack of respect for her private and family life under Article 8 (compare *Guillot*, § 27; *Salonen*; and *Heidecker-Tiemann*, all cited above).

41. The Court notes, in addition, that it has previously taken into account in its analysis, among other things, the fact of earlier acceptance for official registration by the domestic authorities of the forename or name in dispute (see *Johansson*, cited above, § 38, and *Aktaş and Aslaniskender v. Turkey*, nos. 18684/07 and 21101/07, § 48, 25 June 2019). It observes that in the present case, as argued by the Government and not contested by the applicant, the forename in question had never been registered.

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 18 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Liv Tigerstedt | Marko Bošnjak |
| Deputy Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Sabato joined by Judge Bošnjak is annexed to this judgment.

M.B.
L.T.

# OPINION OF JUDGE SABATO JOINED BY JUDGE BOŠNJAK

## I. INTRODUCTION: A MISSED OPPORTUNITY IN THE PROCESS OF RECONSIDERING THE COURT'S CASE-LAW ON THE RIGHT TO CHOOSE A NAME

1. For the reasons (of a merely procedural nature) we will set out below (in part B of section I of this opinion), we share the majority's position in this case that there has been no violation by the respondent State of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

Aside from our agreement as to the outcome of the case, however, there was little in the reasoning of the judgment in which we did not differ from our distinguished colleagues of the majority: since the judgment is not centred – as we would have expected – on those merely procedural aspects we have just hinted at and will better explain below, we can in essence view ourselves as dissenting.

2. The majority's position and our own diverge in an area of the application of the Convention that is of the utmost importance. Indeed, the majority reaffirm some of the Court's existing case-law on the right to choose a name, as part and parcel of private and/or family life, which appears to us, as we will try to show, most obsolete.

3. We would have hoped, alternatively, either to decide the case on the basis of the technicality we will explain below (thus leaving open all the extant issues concerning the right to choose a name under Article 8 of the Convention) or, better still, to reconsider the existing case-law in the light of present-day conditions. At this stage, however, we can only trust that, albeit contained in a concurring opinion, our clear dissent on these points may allow the Court to correct its stance, whether in this same case by way of referral to the Grand Chamber, or in future cases by way of re-examination of what will hopefully become an unfortunate precedent.

4. In order to clarify the issues at stake, we will (in section II of this opinion) deal with some of the facts (part A) that have, in our view, been too quickly disposed of by the majority. Understanding the nuances of the facts usually makes it easier to understand the way in which the case-law ought to be developed further. We will then critically review the majority's assessment (part C), after having offered our own (part B), to allow the reader to compare; it will be in part B that we will identify the (sole) point on which there could have been agreement with the majority, in so far as that point, even taken alone, could have led to the same outcome that the majority have determined; unfortunately, however, the majority do not rely on this point (or, more

precisely, they do not isolate consideration of this point from their remaining findings).

5. We will then identify (in section III, which we will subdivide into three parts), firstly, international and European developments in the area of the choice of names (part A), something which the majority appear to have neglected; secondly, the points of disagreement between the majority's legal findings and our own on those aspects which – as has already been mentioned – we find to be core principles in today's understanding of Article 8 with respect to the right to choose a name (part B); thirdly, we will discuss some ancillary (but not unimportant) passages of the majority's judgment (part C).

6. Lastly, we will draw some conclusions (section IV), attempting to underscore why – in our humble opinion – this case provided the Court with a basis on which to fine-tune its case-law on the right to choose a name; unfortunately the majority have, to our regret, missed this opportunity and – instead of fulfilling the mission, assigned to the Court by the Convention, of constantly updating its case-law – have uncritically reaffirmed a traditional approach.

## II. THE FACTS AND THEIR ASSESSMENT

### A. The facts

7. The majority, in paragraph 7 of the judgment, relate that a child was born to the applicant and to her husband, the latter being the leader of the *Müsəlman Birliyi* ("Muslim Union") religious movement, held in pre-trial detention at the time of the child's birth. It can also be seen from the file that the child's father, Taleh Kamil oglu Baghirov, was a Muslim theologian, and that he sent a letter to the first-instance court informing it that he consented to the child's being attributed the elements of the name chosen for him by the child's mother (see paragraph 7 of the judgment).

8. The name chosen by the parents was "*ƏbülfəzlAbbas*" (which can be transliterated into Latin script as Abulfazlabbas; for alternative spellings, see paragraph 8 of the judgment). From a structural point of view, this name appears to be the combination of two of several elements usually found in an Arabic name, these being a first name (*ism*, Abbas) and a teknonym or *nom de guerre* (*kunya,* Abulfazl, from the Arabic *Abu al-Fadl* – "father of virtue"); moreover, etymologically, the roots of the constituent elements stem from Arabic[1]. The two constituent elements of the name identify the historical

[1] For the role of names in Islam, the structure of Arabic names, and an analysis of the relationship between that religion's naming practices and Arabic (which explains the fact that "religious commonality results in a naturally striking degree of homogeneity and resemblance in the names of Muslims … because Arabic, and to a lesser extent Persian and Turkish languages, predominated in Muslim culture during its ascension and gradual expansion to countries beyond Arabia"), see K.M. Sharma, "What's in a name?: law,

figure of Al-Abbas ibn Ali ibn Abi Talib, the son of the first imam in the Shiʿa branch of Islam. Abbas's grave in Karbala, Iraq, the holy city for Shiʿa Muslims, is visited each year by millions of pilgrims who revere him as a martyr.

9. In her judicial complaint contesting the administrative authority's refusal to register the forename of her choice for the child, the applicant merely cited several provisions of domestic law, without advancing any specific arguments regarding the name's significance for her (see, again, paragraph 7 of the judgment). After the first-instance court dismissed her claim (see paragraph 8 of the judgment), holding mainly that, under local legislation, forenames should be written in the State's official language, and that the forename in question was not in the child's best interests because of its pronunciation, the applicant did not immediately bring an appeal, but rather made a fresh request to the administrative authority to register a different, simpler, forename (*Abbas*); this request was granted (see paragraph 9 of the judgment).

10. However, after the registration of the new forename had been granted, the applicant appealed against the first-instance court's judgment, arguing, among other things, that the first-instance court had failed to give reasons as to why it had found the pronunciation of the original forename not to be in the child's best interests (see paragraph 10 of the judgment).

11. As the majority appropriately recount in the judgment (see paragraphs 11-13 of the judgment), after a further dismissal of her complaint at the appellate level, the applicant, in her cassation appeal, provided a full argument to the effect that the forename the parents had chosen for their son was related to the name of a historical figure of Islam and was widespread in countries where the Shiʿa branch was dominant, without conflicting with the phonetics or spelling of the Azerbaijani language.

12. The Supreme Court did not rely on the arguments put forward by the applicant and, by what appears to be a substitution of grounds (see, as an example, *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, §§ 125-143, 3 November 2022), merely considered that, pending the judicial proceedings, the new forename *Abbas* had been registered, such that the applicant should not have lodged a complaint insisting on the refusal to register the previously proposed name, but should, rather, have applied to have the newly registered forename changed, under an entirely different legal framework (see paragraphs 13 and 18 of the judgment). It dismissed the complaint by way of what we consider, in essence, to be the finding that it had become moot.

13. In particular, the relevant part of the Supreme Court's judgment read as follows[2]:

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religion, and Islamic names", *Denver Journal of International Law and Policy*, Winter 1998, p. 151.

[2] Translation by the Registry.

> "It appears ... that the claimant (through her representative) applied ... on 4 May 2017 requesting the registration of the birth by bestowing on the child the forename 'Abbas', and that the application was granted on 10 May 2017, the birth was registered, and the relevant certificate was issued.
>
> Therefore, the child's rights under Articles 26.1 and 26.5 of the Civil Code and Article 53.1 of the Family Code, as well as the parents' rights under Articles 53.2 and 166.2 of the Family Code, have been respected ... In other words, since the child's birth was registered at the applicant's request (that is, according to her wishes) using another forename – 'Abbas' – the claimant's present claim cannot be granted ... Changing the forename of a child up to the age of 18 is allowed, with the consent of the relevant executive authority (custody and guardianship authority), at the joint request of the parents and taking into account the child's best interests (Article 54.1 of the Family Code)".

## B. Our assessment, limited to the procedural aspect

14. Having thus clarified in some detail the facts that we believe to be relevant, we simply find that the domestic Supreme Court did not in any way deal with the arguments concerning policies on the choice of names, or the possibility for States to interfere with that choice; it merely considered that, owing to the fresh administrative step taken by the parents in re-applying to the birth registry authorities between the first and second instances of the judicial proceedings (resulting in the registration of the child under a simpler name), the proceedings contesting the refusal to register the child under the previously chosen name were now moot, and the parents ought to have resorted to a different procedure, governed by Article 54.1 of the Family Code.

15. Since this conclusion by the domestic Supreme Court does not appear arbitrary to us, we consider that the Court's finding that there has been no violation of Article 8 of the Convention could very well have been based exclusively on the Convention-compliance of what was, in essence, the dismissal, on reasonable procedural grounds, of an otherwise potentially meritorious complaint. The reasons adduced by the applicant (for the first time before the Court; see paragraphs 28 and 38 of the judgment) to justify the continuation of the domestic proceedings after registration of the new forename "Abbas" (namely, that such registration was allegedly needed to take the child to Iran for a medical examination), even if they had been well-founded (where the majority do not find them to be substantiated – see paragraphs 38-39 of the judgment), were not such, in our view, as to require a deviation from the domestic procedural framework. This was especially so since the domestic appellate and cassation judges were not given any hint as to those reasons, which had allegedly "forced" the parents to bestow a new name on the child while maintaining their complaint against the refusal to

register the previous name. Furthermore, the applicant did not give the domestic authorities the chance to make things right by initiating the procedurally proper avenue for a name change under Article 54.1 of the Family Code. The above considerations allowed us to approve the outcome of the case (and the outcome alone), as determined by the majority.

### C. The majority's assessment of the case as a whole with regard to naming policies

16. The majority include in their reasoning the above argument (with which we can concur) that the domestic authorities reasonably dismissed a complaint which had become moot, and that the applicant failed to pursue the appropriate procedural avenue. Unfortunately, however, they intermingle this finding with other findings as part of a global approach to which we must now call attention (see paragraphs 39-41 of the judgment). It is these additional findings which we humbly and respectfully submit are questionable in view of the present-day development of European societies and international law.

17. Indeed, the majority, in addition to taking note of the procedural flaw on which the Supreme Court (understandably, in our view) based its dismissal of the claim, refer also to the judgments of the first- and second-instance courts, which had based their reasoning on the argument that the forename was not in the child's best interests owing to its pronunciation in an Azerbaijani context (see paragraphs 35 and 36 of the judgment). The majority's approach based on a review of the domestic proceedings as a whole comes out especially clearly in paragraph 39 of the judgment, where the various reasons for dismissal at the three levels of domestic judicial proceedings are considered jointly, and are all endorsed by the majority.

It is rather telling that this endorsement takes the form of a reference to the "wide" margin of appreciation to be afforded (in the majority's view) to the State (see paragraph 39 *in fine* of the judgment): in our view, the reference to that margin is chiefly to be understood as pointing to the domestic authorities' substantive findings, namely those related to the unacceptability of the name in the national culture, and not to the finding that a procedural flaw had been identified (in the choice of the type of proceedings to be pursued).

18. This is confirmed by an analysis of the way in which the majority choose to include citations from the Court's case-law. Indeed:

(a) Firstly, the majority point out (in paragraph 31 of the judgment) that "in weighing up the different interests at stake, consideration should be given, on the one hand, to the [parent's] right to choose a forename for [his or] her child, and on the other hand, the public interest in regulating the choice of names", where "the public interest" is said to encompass not only "the child's interests and ... the protection of the

child from an unsuitable name (such as ridiculous or whimsical names)", but also "the preservation of national naming practice"[3] (emphasis added).

(b) Secondly, the majority reiterate the case-law (in paragraph 33 of the judgment) according to which "[t]he process whereby surnames and forenames are given, recognised and used is a domain in which national particularities are the strongest and in which there are virtually no points of convergence between the internal rules of the Contracting States ... In each of these countries, the use of names has been influenced by a multitude of factors of an historical, linguistic, religious and cultural nature, so that it is extremely difficult, if not impossible, to find a common denominator. The margin of appreciation which the State authorities enjoy in the sphere under consideration is wide"[4] (emphases added).

(c) Thirdly, in paragraph 40 of the judgment the majority observe "that the refusal to register the [original] forename ... d[id] not prevent the [parent] from using that forename" in everyday life, concluding on this basis that "the inconvenience relied on by the applicant", related to the mere lack of registration, "[was] not sufficient to lead the Court to conclude that there ha[d] been a lack of respect for ... private and family life under Article 8". In other words, in the majority's opinion, the refusal to register a name would be irrelevant if not also accompanied by an impediment, by the authorities, to the informal use of the same name[5].

(d) Fourthly and finally, in paragraph 41 of the judgment, the majority draw from the consideration that in some precedents the Court has "taken into account in its analysis, among other things, the fact of earlier acceptance for official registration by the domestic authorities of the forename or name in dispute" the conclusion – since in the present case "the forename in question had never been registered" – that the lack of previous registration was an additional reason to hold that the refusal to register a name (for the first time) was justified[6].

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[3] In this regard, we will later discuss the case-law in *Johansson* (cited below) and other similar judgments.

[4] See our discussion, below, of cases such as *Bulgakov v. Ukraine*, no. 59894/00, § 43, 11 September 2007, and *Jacquinet and Embarek Ben Mohamed v. Belgium*, no. 61860/15, §§ 52 and 54, 7 February 2023.

[5] We will take the view, below, that the right to a name is also a right to its official recognition as a component of its use in social relationships.

[6] In this regard, we will subsequently discuss *Johansson* and *Aktaş and Aslaniskender* (both cited below), showing that the interpretation of these precedents in this area should most likely differ from that provided by the majority.

19. This recapitulation of the majority's assessment leads us to consider – leaving aside the issue of the dismissal of the applicant's case by the domestic Supreme Court on account of a procedural flaw (a decision which, we agree, was Convention-compliant) – that they also held, more generally, that the refusal by the lower courts and, ultimately, the relevant administrative authorities to recognise the name, based as it was on the alleged national/cultural/linguistic unacceptability of that name, was equally in line with Article 8 of the Convention, an assessment which we are unable to endorse, as we will now try to clarify.

## III. THE NEED FOR A SUBSTANTIAL REASSESSMENT OF THE COURT'S CASE-LAW IN THE AREA OF THE CHOICE OF NAMES

### A. International and European developments in the area of the choice of names

20. Having provided the above additional details as to the factual and legal aspects of the case as assessed by the majority and ourselves, we can now propose an interpretation of Article 8 of the Convention in the area of the choice of names that diverges significantly from the one reaffirmed by the majority.

21. We should like to discuss the topic under scrutiny as concerning the choice of names in general, without needing – for our purposes – to distinguish between the right of a person (whether adult or child) to have a name and the right of parents to bestow a name on their child, or between those static rights and the dynamic right to obtain the change of a previously registered name. Only in the final part of this opinion, in order to prepare our conclusions, will it be necessary for us to return to consideration of the particular case of the choice of names for new-born children.

22. As a first step towards a correct interpretation of Article 8 in this area, we consider that regard should be had to present-day conditions in Europe: migrations and the global mobility of persons pose specific challenges for the cross-border recognition of identities, including names, which sometimes have to be changed or, more often, transcribed and/or transliterated[7]. Another

[7] See, for example, A. M. Gross, "Rights and Normalization: A Critical Study of European Human Rights Case Law on the Choice and Change of Names", *Harvard Human Rights Journal*, vol. 9 (Spring 1996), pp. 269-284. For a penetrating analysis (throughout several chapters) of the relationship between the names of individuals and official languages or scripts (with letters or diacritics/suffixes lacking in some alphabets, and names "sounding different" from, or having no equivalent in, the official language), as well as criticism of the case-law of Court of Justice of the European Union and the Court on States' refusals to recognise, or requests to amend, the spelling of names, see F. de Varennes and E. Kuzborska, "Human Rights and a Person's Name: Legal Trends and Challenges", *Human Rights Quarterly*, vol. 37, no. 4 (Nov. 2015), pp. 1001 et seq. The authors (op. cit., p. 1006) note

aspect – and this is a core aspect for the purposes of this opinion – is the relationship between minorities and the use of names: as scholars have noted, names used by minority groups may be characterised by a State as "divergent" and barred in a bid to maintain cultural hegemony[8]. This type of approach is often disguised as an effort to maintain linguistic unity.

23. As the Court highlighted (concerning family names) in the case of *Burghartz v. Switzerland* (22 February 1994, § 24, Series A no. 280-B), "[u]nlike some other international instruments (such as the International Covenant on Civil and Political Rights (Article 24 para. 2), the Convention on the Rights of the Child ... (Articles 7 and 8) or the American Convention on Human Rights (Article 18)[9-10], Article 8 of the Convention does not

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that the Court "has tended to accept uncritically the argument presented by authorities that … letters 'do not exist'", or to accept "the need for 'linguistic unity'" or that the official language should be protected, usually under "the doctrine of 'margin of appreciation'". Judgments reviewed include *Mentzen v. Latvia* (dec.), no. 71074/01 and *Kuharec alias Kuhareca v. Latvia* (dec.), no. 71557/01, both in ECHR 2004-XII, as well as *Kemal Taşkın and Others v. Turkey*, nos. 30206/04 and 7 others, 2 February 2010. See also one of the authors' previous works, F. de Varennes, "Official Language Preferences, and the Recognition of a Person's Name: A Significant Clarification after *Raihman v. Latvia*", *European Yearbook of Minority Issues*, vol. 9 (2010), pp. 5-20. It is interesting to note the comparison that this study proposes between the *Mentzen* case-law (which afforded a State language protection on grounds that were "not immediately obvious", based on a "somewhat convoluted" doctrine of the margin of appreciation, thereby indicating "some degree of resistance to human rights … from legal and political circles … especially when involving minorities") and the case-law of the United Nations Human Rights Committee in *Raihman v. Latvia* (Communication no. 1621/2007, 28 October 2010), which "thankfully provid[ed] a bit more clarity and consistency" with human rights developments (ibid., pp. 15 et seq.).

[8] This concept is proposed by A. M. Gross, op. cit., p. 274. See also F. de Varennes and E. Kuzborska, op. cit., p. 986.

[9] To which we might add the African Charter on the Rights and Welfare of the Child (Article 6) and the United Nations Convention on the Rights of Persons with Disabilities (Article 18). It should be noted that most of the relevant international rules concern the right of the child to be registered at birth and to have a name (International Covenant on Civil and Political Rights, African Charter, Convention on the Rights of Persons with Disabilities, as well as Article 7 of the Convention on the Rights of the Child), while Article 8 of the Convention on the Rights of the Child adds that "States Parties undertake to respect the right of the child to preserve his or her identity, including … name … without unlawful interference" (emphasis added).

For a list of binding instruments concerning birth and civil status registers, as well as international private law conventions, mostly adopted through the International Commission on Civil Status, see L. Tomasi, "Il diritto al nome tra libertà di circolazione e diritti fondamentali", *Rivista di diritto internazionale privato e processuale*, no. 4 (October-December 2009), p. 891; the author (ibid., p. 899) expresses the hope that the Court may at some point recognise the trans-national continuity of names (and, to that end, draws a comparison with the answers provided by the Court of Justice of the European Union).

For a list of other international (mostly non-binding) instruments, see, *inter alia*, F. de Varennes and E. Kuzborska, op. cit., pp. 982-83.

[10] On the basis, among others, of the fact that "international human rights treaties are growingly paying explicit attention to the 'right to a name'", scholars hold that "there is a trend towards the recognition of the human right to a name", which "puts the accent on

contain any explicit provisions on names"[11]. The Court held that, nonetheless, "as a means of personal identification and of linking to a family, a person's name ... concerns his or her private and family life. The fact that society and the State have an interest in regulating the use of names does not exclude this, since these public-law aspects are compatible with private life conceived of as including, to a certain degree, the right to establish and develop relationships with other human beings, in professional or business contexts as in others" (ibid.). The existence of different approaches among the Court's judges – which, as we will see, has permeated its case-law to this day – was clearly displayed in the strong dissenting opinions in *Burghartz*: in particular, Judges Pettiti and Valticos held that "[a]s in the determination of nationality, the legislation on assigning names must remain within the State's domain and does not come within the ambit of the Convention"[12].

24. Since the 1980s, especially owing to societal developments concerning ethnic, linguistic, and gender equality, and the growing awareness of the need to avoid discrimination, the concept of the right to a name has increasingly evolved towards the requirement that States protect a person's "original" name: original both in the sense of indicating the name chosen by the parents before registration (which the registration authorities should "preserve" as far as possible), and in the sense of indicating the name previously used in a different cultural/national/linguistic context (which the registration authorities should likewise endeavour to "preserve" by giving it trans-border continuity). Several texts – in part already indicated above and in the literature cited – have called on State authorities to eliminate all restrictions which have no objective and reasonable justification.

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autonomy" (K. Lemmens, "To Paul From Koen: The Right to A Name and the European Convention on Human Rights", in K. Lemmens et al. (eds), *Human Rights with a Human Touch - Liber Amicorum Paul Lemmens*, Intersentia, 2019, p. 236).

[11] A historical explanation of the lack of clear recognition of the right to a name in international human-rights law in post-WWII Europe – to be traced back to the contrast between the *laissez-faire* approach of common law countries and the restrictive legislation (dating back to the fifteenth century) of most continental States – is provided by F. de Varennes and E. Kuzborska, op. cit., pp. 977-78. The authors emphasise that the "importance of names in all human society" is well reflected in the Jewish tradition, ascribing special merit to those who preserve their heritage through bestowing and retaining Hebrew names. Indeed, in Hebrew, the book of Exodus is referred to as *Shemot* ("Names"), and the *midrash*, comparing Genesis 46 with Exodus 1, states that the reason for Israel's redemption from Egyptian bondage was that, while in Egypt, "they did not change their names; as Reuben and Simeon they descended and as Reuben and Simeon they went out".

[12] See the discussion in J.A.A., "Right to a name", *European Law Review*, 1995, 20(1), p. 120. The continuing discussion is attested to by other cases in which dissenting opinions were annexed to the Court's judgment; see, in particular, the dissenting opinion by Judges Berro-Lefèvre, Nußberger and Laffranque in the case of *Golemanova v. Bulgaria*, no. 11369/04, 17 February 2011. That separate opinion was commented on as a symptom of an evolving approach by M. Puéchavy, "Le contentieux du prénom ou du nom de famille devant la Cour européenne des droits de l'Homme", in J. Casadevall et al. (eds), *Essays in Honour of Dean Spielmann*, Wolf Legal Publishers, 2015, p. 527.

25. Focusing only on the treatment of minority names, which is the topic most relevant for this opinion, it may be useful to recall a few of these developments.

(a) Owing to the broad scope of the concept of "discrimination" contained in the Convention on the Elimination of All Forms of Racial Discrimination, the United Nations Committee on the Elimination of Racial Discrimination (CERD) has indicated that legislation or *de facto* practices imposing on new citizens the obligation to change their name and adopt a name or surname in the official language of the country of destination are discriminatory, even if the original name does not belong to, or does not sound like, the official language[13].

(b) The Framework Convention for the Protection of National Minorities (the "Framework Convention") adopted within the Council of Europe[14], after recognising in its recitals that "a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity", provides in Article 11 (1) that "every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them" (emphasis added); a similar provision, albeit concerning only family names, is contained in Article 10 (5) of the European Charter for Regional or Minority Languages, also adopted within the Council of Europe[15].

(c) In its Thematic Commentary no. 3 adopted on 24 May 2012, entitled "The language rights of persons belonging to national minorities under the Framework Convention", the Advisory Committee on the

[13] For references, see F. de Varennes and E. Kuzborska, op. cit., pp. 995-96. As the authors note, one European country – Iceland – was among those targeted by the Committee in 2001 as having legislation that it deemed discriminatory. Iceland consequently amended its legislation. For an anecdote referring to the experience of the world-renowned pianist Vladimir Ashkenazy when he fled to Iceland in 1972, see Sh. Shakargy, "You Name It: On the Cross-Border Regulation of Names", *American Journal of Comparative Law*, Vol. 68 (3) (September 2020), p. 647. Although concerned with choice-of-law issues, this article provides valuable insight and an important comparative perspective, in addition to concluding with an attractive proposal based on allowing people to choose, within a given framework, the applicable legal framework.

[14] ETS No. 157, opened for signature in Strasbourg on 1 February 1995, presently in force among 39 States, including Azerbaijan since 1 October 2000.

[15] ETS No. 148, opened for signature in Strasbourg on 5 November 1992, presently in force among 25 States, not including Azerbaijan.

Framework Convention devotes a specific chapter (Chapter 2.1) to "Personal names and patronyms". Paragraphs 61 and 62 of the Commentary read as follows:

"61. The right to use one's personal name in a minority language and have it officially recognised is a core linguistic right, linked closely to personal identity and dignity, and has been emphasised by the Advisory Committee in a number of country-specific Opinions. States Parties must make sure that individuals are free from obstacles or pressure on the use and recognition of their names in their own language. This means that relevant civil servants, such as those issuing birth certificates, must be aware of their obligations. While the provision is worded in a way that allows States Parties to apply it in light of their own particular circumstances and legal system, a clear legislative framework in line with international standards should exist and be implemented in an equal manner.

62. In cases where persons have been obliged to change or give up their names, Article 11 of the Framework Convention requires that it should be possible for the original form of the name to be added to passports, identity documents or birth certificates. ... Authorities may, in line with Article 11, require that personal identity documents contain a phonetic transcription of the personal name into the official alphabet, if it contains foreign characters. However, the transcription should be as accurate as possible and should not be disconnected from the essential elements of the minority language, such as its alphabet and grammar. In addition, the Advisory Committee expects that the right to official recognition of names in minority languages is always fully respected. New technologies facilitate the use of diacritic signs and alphabets of national minorities. States are therefore encouraged to make use of all available technical opportunities in order to offer full and effective guarantees to the rights provided by Article 11 of the Framework Convention" (emphases added).

With regard to the above Thematic Commentary, we feel obliged to point out that, in the footnote corresponding to the sentence emphasised above, where the Committee voices the expectation that "the right to official recognition of names in minority languages is always fully respected", specific reference is made to the Committee's First Opinion on Azerbaijan, wherein Article 8 of the Law on State Language, which provides that the names of the citizens of Azerbaijan be written in the State language, was criticised as being partly non-compliant with Article 11 of the Framework Convention[16].

## B. The Court's existing case-law: approaches to be preserved and approaches to be reconsidered

26. As we have briefly tried to show above, the societal and legal developments of recent years have been tending towards the position that individuals should enjoy a right to their "own" or "original" name (possibly

[16] See, in part B of this section, our discussion of the fact that it is precisely on this provision that the domestic authorities based, among other things, their decisions in the applicant's case, and that the majority fail to consider its divergence from other international instruments developed, like the Convention, within the Council of Europe.

including its linguistic/phonetic expression), coupled with the need to afford special protection to the continuity of names in cases of cross-border mobility or, outside such cases, to the choice of names within a minority (choice of names for new-born children and requests for name-changes in the case of adults), where such names typically hark back to a previous national origin or to a different cultural/ethnic/religious identity. International legal texts post-dating the Convention, some of which are binding on the Contracting Parties or originate within the Council of Europe itself, have endorsed this trend.

27. Although it is not the Court's "task to review governments' compliance with instruments other than the European Convention on Human Rights and its Protocols", we consider more specifically that the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, and, above all, the Framework Convention for the Protection of National Minorities, which, in the latter case, "like the Convention itself, was drawn up within the Council of Europe", should "provide it with a source of inspiration", "like other international treaties" (with reference to the European Social Charter, see, for example, *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V). Moreover, the Convention cannot be interpreted in a vacuum and must be construed in harmony with the general principles of international law.

28. In this context, we consider that the majority unfortunately fail to reconsider the Court's existing case-law and to interpret it dynamically, in the light of present-day conditions, in a situation – such as the one at stake – that was entirely unforeseeable and unimaginable at the time the Convention was first adopted. We will therefore briefly attempt to outline how the majority should, in our view, have re-read the case-law that they have instead – and we say this with all due respect – uncritically reiterated. Naturally, while we have so far discussed the right to a name in general (see paragraph 21 of this opinion), we will henceforth have to address solely those legal aspects that are material to the present case, namely those linked to the registration of the names of new-born children.

### *1. The need to proscribe the mere protection of the national language or phonetics as legitimate grounds for interference*

29. First of all, we find that the principles upheld in paragraph 31 of the judgment may still be deemed to be valid, albeit subject to major revision.

30. In particular, while confirming that "in weighing up the different interests at stake, consideration should be given, on the one hand, to the [parent's] right to choose a forename for [his or] her child, and on the other hand, the public interest in regulating the choice of names", we would endorse the view that "the public interest" should continue to include "the child's interests and ... the protection of the child from an unsuitable name (such as ridiculous or whimsical names)". Particular care should be recommended in

this area, since what is considered ridiculous or whimsical (for example) in one culture or language may not be so in another culture or language.

31. That which, in our approach, should be revised, is the Court's favourable consideration, in this area, of "the preservation of national naming practice" (an aim mentioned in paragraph 31 of the judgment; emphasis added). The majority base their reiteration of this aspect of the case-law on *Johansson v. Finland* (no. 10163/02, § 36, 6 September 2007), where it is stated that, "as to the aim of preserving a distinctive national naming practice, the Court has acknowledged that measures intended to protect a given language constitute a legitimate aim". In this regard, it should be considered that the passage relied upon – already dating back to societal conditions of roughly two decades ago – was itself based on previous case-law (*Mentzen* (dec.), cited together with *Kuharec* in footnote 7 above) that has been widely criticised by scholars since.

32. Today, the above approach is inconsistent, in our view, with a correct reading of Article 8 as being in harmony with the international law sources we have reviewed in part, in particular with the Framework Convention. Also, regard should be had to the fact that, in *Johansson*, while paying lip service to *Mentzen*, the Court already sought to limit the impact of obsolete authorities, in that, for other reasons, it found that there had been a violation on the part of a respondent State that had refused to register a forename which indeed did not conform to the national spelling standards.

33. We therefore hope that the case-law developed, for instance, in *Mentzen*, *Kuharec* and *Johansson* will be revised in so far as it over-protects national naming practices *vis-à-vis* the recognition of names in minority languages and, potentially, scripts and phonetics. A new balance should be sought.

34. We have another consideration, which is only apparently of lesser importance: in their uncritical approach to tendencies aimed at preserving national linguistic requirements barring registration of "deviant" names, the majority have even included in the judgment (see paragraph 20 of the judgment) the text of Article 8 of the domestic Law on State Language, providing that "the forenames, patronymics and surnames of citizens must be written in the State language in official documents".

We regret that the majority fail to criticise this provision, on which, as we have mentioned, the domestic authorities based their decisions in the applicant's case (see paragraph 6 of the judgment).

We especially regret this omission on the part of the majority because it passes over in silence the critical stance taken by the Advisory Committee on the Framework Convention for the Protection of National Minorities on that very provision, to which we have referred above (see paragraph 25 *in fine* of this opinion). This causes the majority's judgment to collide, with no specific reasons given, with the observations of a body operating within the same

framework of the Council of Europe, in which the Court plays an important role.

By squandering the opportunity offered by this case to take a position on the contrast between statutes of this kind and Article 8 of the Convention, the majority – and this is what we regret the most – have contributed to the perpetuation of an almost 700-year-old practice enabling European States to ban names or forcibly change them for linguistic reasons[17] that – as we have mentioned – can and often do serve as a disguise for other, more discriminatory reasons.

*2. The need to restrict admissible interference solely to the protection of the vulnerable, in particular of children, against unsuitable names; the margin of appreciation should be limited*

35. Secondly, we repeat that by citing the precedents of *Bulgakov v. Ukraine* (no. 59894/00, § 43, 11 September 2007), and *Jacquinet and Embarek Ben Mohamed v. Belgium* (no. 61860/15, §§ 52 and 54, 7 February 2023), the majority – in paragraph 33 of the judgment – have reiterated that "[t]he process whereby surnames and forenames are given, recognised and used is a domain in which national particularities are the strongest and in which there are virtually no points of convergence between the internal rules of the Contracting States ... In each of these countries, the use of names has been influenced by a multitude of factors of an historical, linguistic, religious and cultural nature, so that it is extremely difficult, if not impossible, to find a common denominator. The margin of appreciation which the State authorities enjoy in the sphere under consideration is wide" (emphases added).

36. In this regard, we should note at the outset that, while *Bulgakov*, almost two decades ago, clearly reiterated the *Mentzen* and *Kuharec* approach, the reference to the much more recent *Jacquinet* case is in no way decisive. In that judgment, the previous case-law (including the reference to a "wide" margin of appreciation) was merely recapitulated, and this was done only *obiter*, since the *ratio decidendi* of the judgment was very different, as it did not concern preservation of the "original" name or identity issues. The case concerned an adult's request to change his family name (taken from his father) and to substitute his mother's last name for it on account of the deterioration of the father-son relationship following the parents' conflictual divorce. The Court found that the wide margin of appreciation States enjoy could justify – absent any identity issues – giving predominant weight to the principle of name continuity.

[17] According to F. de Varennes, op. ult. cit., p. 9, one of the first instances of legislation forcing individuals to adopt a name in a particular language was the 1366 Statutes of Kilkenny ("Also, it is ordained and established that every Englishman … be named by an English name, leaving off entirely the manner of naming used by the Irish").

37. Having thus taken recent case-law out of the picture, it remains to be established whether, in present-day conditions, where global mobility is generalised and minority identities should be preserved, States should continue to enjoy a wide margin of appreciation in regulating the registration of names given to new-born children based on the "multitude of factors of an historical, linguistic, religious and cultural nature" which could lead to refusals such as the one suffered by the applicant and which are otherwise proscribed by the corpus of international law cited in section III, part A, of this opinion.

We consider that this is no longer possible and that Article 8 of the Convention should today be interpreted as protecting the choice of parents wishing to give their child a name referring to other languages, religions, ethnicities, etc. Of course, some flexibility would be allowed, and adjustments as to phonetics, transliteration, etc., could still be accepted[18], but nothing beyond that. We regret that the majority have not taken the opportunity offered by this case to align the Court's case-law with present-day conditions and to the practices of most European States (under the supervision of the Council of Europe, as mentioned above). Consequently, admissible interferences could only be based on the need to protect the vulnerable, in particular children, against objectively unsuitable names (for example ridiculous or whimsical names); the margin of appreciation should henceforth be limited.

## C. Some additional findings by the majority that are debatable

38. There are some additional – albeit ancillary – aspects of the majority's reasoning on which we unfortunately differ with them. We must therefore indicate them briefly, in the hope, again, that, should this judgment be revisited in these same proceedings or on future occasions, it will be clear that this separate opinion was not given inconsiderately.

### *1. The ability to use a name informally does not solve the issue of lack of recognition*

39. We have already mentioned (see paragraph 18.c of this opinion) that the majority observe "that the refusal to register the [original] forename ... d[id] not prevent the [parent] from using that forename" in everyday life, concluding on this basis that "the inconvenience relied on by the applicant", related to the mere lack of registration, "[was] not sufficient to lead the Court

[18] See the criteria suggested by the Advisory Committee on the Framework Convention in its Thematic Commentary no. 3, cited above.

to conclude that there ha[d] been a lack of respect for ... private and family life under Article 8" (see paragraph 40 of the judgment).

40. In this connection, while we need not dwell – although we respectfully have our doubts – on the relevance of the authorities cited (two of them very remote) in support of this finding, we consider that an informal use of a name cannot in any way be considered to diminish the impact on personal and family life of a denial of official recognition. At issue in the application before the Court was, and is, the fact that a refusal to register a name in the official civil status records had taken place – a fact which remains equally relevant, irrespective of any impediment by the authorities to an informal use of that name.

*2. Previous registrations can demonstrate acceptability of registration, but lack of previous registration does not constitute grounds for refusal to register a name for the first time*

41. We have also already mentioned (see paragraph 18.d of this opinion), the passage (see paragraph 41 of the judgment) in which the majority draw from precedents (*Johansson*, cited above, § 38, and *Aktaş and Aslaniskender v. Turkey*, nos. 18684/07 and 21101/07, § 48, 25 June 2019) where the Court has "taken into account in its analysis, among other things, the fact of earlier acceptance for official registration by the domestic authorities of the forename or name in dispute" the conclusion – since in the present case "the forename in question had never been registered" – that the lack of previous registrations was an additional reason to hold that the refusal to register a name (for the first time) was justified.

42. In this instance, we frankly believe that the majority are in error: in both *Johansson* and *Aktaş and Aslaniskender* violations of Article 8 of the Convention were found in connection with the refusal to recognise, respectively, the first name of a new-born child and the change of an adult's family name, and in both cases the fact that the same identifier had been accepted for official registration in other situations was used by the Court as partial evidence to substantiate the violation.

43. It is obvious from the above that one cannot logically derive from such precedents (as the majority unfortunately do) that, in the opposite situation (where no previous registration existed), the contrary rule would apply (namely, that a "first-time" registration would be proscribed).

44. Aside from this misreading of the precedents, one should add that it is inherent in the principles emerging from recent international law that domestic registration should now extend to names that constitute "new entries" from different national, cultural and linguistic contexts.

## IV. CONCLUSION: PROTECTING THE ORIGINAL NAME IS AN INHERENT PART OF RECOGNISING INDIVIDUAL HUMAN DIGNITY

45. As we have shown, in this case two parents chose a forename for their child which was a combination of two elements of an Arabic name, unequivocally designating a famous religious figure of their faith, the Shiʿa branch of Islam. They transliterated the name into Azerbaijani script. The administrative authorities refused to register the name, relying in particular on a provision of domestic law requiring that names be in the State language (a provision having met with criticism from an advisory body of the Council of Europe). The proceedings initiated by the applicant before the domestic courts resulted in the first- and second-instance courts' dismissing the complaint on the ground that forenames were to be written in the State language and considering that the forename in question was not in the child's best interests on account of its pronunciation, and in the Supreme Court's holding that the complaint had, in essence, become moot because another name had been registered in the meantime, such that a different procedure should have been followed.

46. While in our view the outcome of the present case (no violation of Article 8 of the Convention) could have been arrived at based solely on the non-arbitrariness of the procedural approach chosen by the domestic Supreme Court in holding the complaint to be moot, thereby leaving open all other issues (and this explains why we concur with the outcome of the majority's judgment, while dissenting as to the reasoning provided), the majority nevertheless chose to examine the domestic proceedings as a whole, thus deciding, among other things, to confirm some of the Court's precedents recognising the preservation of national naming practices and factors of a historical, linguistic, religious and cultural nature as legitimate aims in pursuit of which interference in the area of regulating the choice of names could be justified. The majority have thereby reaffirmed that the margin of appreciation which State authorities enjoy in the sphere under consideration is wide.

47. We respectfully dissent on these legal findings for the reasons that we have endeavoured to set out in this opinion. We have tried to show that, based on a number of developments in European societies and especially in international law, Article 8 of the Convention must now be read as only granting States a limited margin of appreciation in the area of interference with the choice of names, aimed essentially at the protection of the vulnerable (especially children) whose interests might be jeopardised by objectively unsuitable names. In every other regard, the protection of private and family life should be held to include recognition of ample freedom in individual choices.

48. We are deeply worried that the Court's endorsement, in this case, of domestic legislation banning the possibility of naming children in languages other than the national language, in addition to being incompatible with several international standards, may favour discriminatory practices against minorities or migrants. As we have stated, we regret that the majority have failed to consider that the approach taken by the domestic authorities, based on the aforementioned provision, was incompatible with present-day conditions affecting the interpretation to be given to Article 8 of the Convention. To borrow the words of one of our distinguished colleagues in a case concerning a similar provision enacted in 1934 in what is now Türkiye,

> "we fully understand that in 1934 it was considered necessary to require every citizen to adopt a name of Turkish origin. But we are no longer living in 1934.
>
> Modern society is characterised by a great diversity of origins and influences ... The legislator must allow the courts to take this reality into account.
>
> By excluding any balancing of the interests at stake, the legislature fails to meet its positive obligation to protect the right to private life of individuals"[19].

49. We consider that refusing to register a particular name, especially when it is bound up with an identity[20], is detrimental to human dignity and cannot be justified on any pressing grounds of public policy or by the need to protect public order. Indeed, the right to a name must be

> "equated with the right to hold a recognised individual human dignity ... The name used for a human being is in itself a civilized constituent that upholds and adds to human dignity"[21].

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[19] P. Lemmens, Concurring opinion in *Aktaş and Aslaniskender,* cited above (our translation).

[20] For an example of consideration by the Court of the "identity-related aspect" of an application to change a surname, which had been neglected by the domestic authorities in violation of Article 8 of the Convention, see *Henry Kismoun v. France*, no. 32265/10, § 36, 5 December 2013. In *Burghartz* (cited above, § 24), the Court had already pointed out in general terms that a surname is "a means of ... linking to a family". While the instant case concerns a forename, the "identity-related aspect" of the application is nonetheless present, which makes it difficult to agree with the majority when they state that the "inconvenience" caused by the lack of registration had no impact on family life (see paragraph 40 of the judgment). For an interesting chapter specifically examining, from a linguistic perspective, the Court's case-law concerning the relationship between "language and identity" including in the area of registration of names, see J. Brannan, "Language-related complaints under Article 8 of the European Convention on Human Rights: striking the right balance", in J. Casadevall et al. (eds), *Essays in Honour of Dean Spielmann*, op. cit., p. 37.

[21] H. S. Greve, "'What's in a Name?': The Human Right to a Recognized Individual Identity", in S. Breitenmoser et al. (eds), *Human Rights, Democracy and the Rule of Law: Liber Amicorum Luzius Wildhaber*, Nomos, 2007, p. 296.