AS TO THE ADMISSIBILITY OF

Application No. 27868/95
by Mauri Henrik SALONEN
and Soile SALONEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 May 1995 by Mauri Henrik Salonen and Soile Salonen against Finland and registered on 17 July 1995 under file No. 27868/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicants are Finnish citizens, both born in 1955 and resident in Kerava. The first applicant is a maintenance supervisor and the second applicant a taxi driver. They are represented before the Commission by Ms Sirpa Leppäluoto, a lawyer practising in Helsinki.

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

The applicants chose to name their daughter, who was born on 2 August 1992, "Ainut Vain Marjaana" (The One and Only Marjaana). The applicants informed the Population Register Office of Tuusula District (kihlakunnan rekisteritoimisto, registerbyrån i häradet) accordingly.

On 10 February 1993 the Population Register Office, on the basis of sections 32a subsection 1 and 32b subsection 2 (1) of the Name Act No. 694/1985 (nimilaki, namnlagen), refused to register this forename on the ground that its form did not comply with Finnish practice.

The Name Act, which was partly amended by Act No. 253/1991,

contains provisions on forenames. Section 32a subsection 1 of the Act reads as follows:

(Translation)

"The reporting and giving of a forename. A child shall be given a forename after birth. No more than three names may be given. The names given shall be submitted to the Population Register Office, when the child is reported for entry into the population register."

Section 32b of the same Act reads as far as relevant:

(Translation)

"General obstacles to permitting a forename. A name which is improper or the use of which can otherwise cause manifest inconvenience cannot be accepted as a forename.

In the absence of a reason mentioned in subsection 3 the following categories of names cannot be accepted:
1) a name which by virtue of its form or spelling is incompatible with domestic practice;
...

A forename which does not comply with the requirements in subsection 2 may, however, be permitted:
1) on the grounds of a religious tradition,
2) if a person on the basis of nationality, family relations or some other special circumstance has a connection with a foreign state and the proposed forename accords with the practice of the said state; or
3) if some other adequate cause is considered to exist."

The child's birth was registered in the population register with the entry "unknown" in the forename column.

On 13 March 1993 the applicants appealed against the decision of the Population Register Office to the County Administrative Board (lääninhallitus, länsstyrelsen) of Uusimaa. They argued that according to their conviction it was the parents who chose a name for their child.

The County Administrative Board invited the Population Register Office and the Advisory Name Board (nimilautakunta, nämnden för namnärenden) to submit observations. On 13 August 1993 the Population Register Office submitted that the appeal should be rejected because the applicants had failed to present relevant grounds in support of the appeal. On 21 September 1993 the Advisory Name Board for its part contended that the names "Ainut" and "Vain" were incompatible with Finnish practice. In its opinion there was no particular reason for accepting them. Furthermore, the Advisory Name Board found that they could cause apparent inconvenience and were therefore unacceptable. Moreover, it noted that in this case the issue was partly to protect the child from her parents. However, it considered the name Marjaana to be acceptable.

The applicants were then invited to comment on the above-mentioned statements. On 9 November 1993 they argued, inter alia, that they were obliged to offer their child the best possible environment, of which her name was a part. The one in question was a beautiful name which suited the child. Moreover, the child had become accustomed thereto and the name was welcomed by most people.

By decision of 25 January 1994 the County Administrative Board ruled that there were no obstacles to the name "Marjaana". It considered, however, the names "Ainut" and "Vain" to be incompatible

with domestic practice and found that no particular reason for accepting these names had been presented. Therefore the County Administrative Board rejected the appeal.

On 6 May 1994 the applicants appealed to the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen). They argued that they had named their child according to their ethical conviction and that such a conviction should not be deemed inferior to a religion. They alleged that their ethical conviction was a particular reason to register the name. Furthermore, they claimed that the name had not been proven to cause inconvenience and considered the authorities' refusal to accept the name to be an unnecessary interference with a person's individuality.

By statement of 13 June 1994, given at the request of the Supreme Administrative Court, the County Administrative Board submitted that the appeal ought to be rejected.

On 28 November 1994 the Supreme Administrative Court upheld the County Administrative Board's decision.

COMPLAINTS

1. The applicants complain that the authorities' refusal to allow them to name their daughter Ainut Vain Marjaana violated their right to respect for their private and family life. They submit that the interference by the authorities was not justified. They invoke Article 8 of the Convention.

2. The applicants further complain under Article 9 of the Convention that the refusal to register the name violated their right to freedom of thought. They allege that the Finnish Name Act or its application violates the said provision, including the right to freedom of religion guaranteed therein.

3. The applicants also complain that the authorities failed to elaborate sufficient reasoning in their decisions and that this amounts to a denial of an effective remedy as guaranteed by Article 13 of the Convention.

4. Finally, the applicants complain that their ethical conviction was not afforded the same status as a religious conviction. They allege that this led to discrimination. They invoke Article 14 read in conjunction with Article 9 of the Convention.

THE LAW

1. The applicants allege that the refusal to register the name "Ainut Vain Marjaana" as their child's forename constituted a violation of their right to respect for their private and family life. They invoke Article 8 (Art. 8) of the Convention which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicants submit that the forename at issue was not

incompatible with domestic practice. It follows that the name was not incompatible with domestic law either. They further submit that the child has been called Ainut Vain Marjaana for several years and that the general attitude towards the said name has been positive.

The Commission notes that Article 8 (Art. 8) does not contain any explicit reference to names. However, since they constitute a means of identifying persons within their families and the community, forenames, like surnames, do concern private and family life (see, mutatis mutandis, Eur. Court HR, Burghartz v. Switzerland judgment of 22 February 1994, Series A no. 280-B, p. 28, para. 24; Eur. Court HR, Stjerna v. Finland judgment of 25 November 1994, Series A no. 299-B, p. 60, para. 37 and Eur. Court HR, Guillot v. France judgment of 24 October 1996, to be published in the Reports of Judgments and Decisions for 1996, para. 21).

Moreover, since the choice of a child's forename by the parents is a personal matter, it comes within the sphere of their private life. The subject-matter of the complaint thus falls within the ambit of Article 8 (Art. 8).

It then needs to be determined whether the refusal to allow the applicants to name their daughter Ainut Vain Marjaana raises an issue of failure to "respect" their private and family life under Article 8 para. 1 (Art. 8-1).

The Commission recalls that the notion of "respect" as enshrined in the said Article is not clear-cut. Its requirements will vary from case to case according to the practices followed in the Contracting States.

In the Commission's opinion, it is in the interests of society to regulate the choice of forenames in order to protect the child from the possible inconveniences caused by a forename which may be considered inappropriate by others. Restrictions on the choice of forenames can therefore be justified in the interests of the child and of society.

Taking into account that circumstances may vary considerably from State to State, the Commission considers that the States enjoy a wide margin of appreciation in the particular sphere under consideration. The Commission's task is not to take the place of the competent domestic authorities in determining the appropriate policy for regulating the choice of forenames in a State, but rather to review under the Convention the decisions those authorities have made when exercising their power of appreciation (see the Stjerna v. Finland judgment, op. cit., p. 61, para. 39).

In determining whether or not disrespect exists regard must be had to the fair balance that has to be struck between the general interest and the interest of the individual (see e.g. Eur. Court HR, B. v. France judgment of 25 March 1992, Series A no. 232-C, p. 47, para. 44 and the Stjerna v. Finland judgment, op. cit., pp. 60-61, para. 38).

In the present case the proposed forename was not accepted by the authorities on the grounds that its form, as regards the names "Ainut" and "Vain", was incompatible with Finnish practice and that no particular reason for accepting it had been presented. The name Marjaana would have been permitted. During the proceedings the possible inconvenience caused by the name and the protection of the child were brought forth.

In the view of the Commission, the refusal of the Finnish authorities to allow the applicants to name their daughter Ainut Vain Marjaana cannot be considered unreasonable, having regard to the aim of the restrictions placed on the use of names to protect a person from

inconveniences caused by his or her name and the margin of appreciation the States enjoy. Furthermore, the refusal to register the forename does not prevent its use by family and acquaintances (see the Guillot v. France judgment, op. cit., para. 27).

In the light of the foregoing, the Commission finds that the refusal to allow the applicants to name their daughter Ainut Vain Marjaana does not constitute a lack of respect for their private and family life as guaranteed by Article 8 para. 1 (Art. 8-1).

It follows that the applicants' complaints, as submitted under Article 8 (Art. 8) of the Convention, are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants complain that they were denied the right to practise their freedom of thought by preventing them from naming their daughter according to their beliefs. In this connection they allege violations of Article 9 (Art. 9) of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The applicants further allege that the Finnish Name Act or its application violates Article 9 (Art. 9) of the Convention.

The Commission notes that it is not its task to examine whether national law is in conformity with the Convention as such.

In the present case it needs to be determined whether the applicants' wish to name their daughter Ainut Vain Marjaana may fall within the ambit of the right to freedom of thought and may therefore be seen as a belief protected by Article 9 para. 1 (Art. 9-1) (cf. No. 8741/79, Dec. 10.3.81, D.R. 24, pp. 137-139). Taking into consideration the comprehensiveness of the concept of thought, this wish can be deemed as a thought in the sense of Article 9 (Art. 9).

The applicants perceived a violation of Article 9 (Art. 9) in the refusal to register the name "Ainut Vain Marjaana". The Commission observes, however, that they were not obliged to give a certain name to their daughter but had the possibility to choose other names as long as they conformed with the requirements of the law.

It remains to be determined whether or not the applicants' wish to name their daughter Ainut Vain Marjaana according to their conviction is protected by Article 9 para. 1 (Art. 9-1) as being a manifestation of a belief in practice.

The Commission recalls that the term "practice" as employed in Article 9 para. 1 (Art. 9-1) does not cover each act which is motivated or influenced by a religion or a belief (cf. Arrowsmith v. the United Kingdom, Comm. Report 12.10.78, para. 71, D.R. 19, pp. 19-20 and Kalaç v. Turkey judgment of 1 July 1997, to be published in the Reports of Judgments and Decisions for 1997, para. 27).

The Commission considers that in the present case the applicants'

wish cannot be considered as a manifestation of a belief in practice in the sense of Article 9 para. 1 (Art. 9-1) of the Convention. The desired name has certainly a strong personal motivation. However, the Commission does not find that it is a manifestation of any belief in the sense that some coherent view on fundamental problems can be seen as being expressed thereby. Moreover, there is nothing to prevent the parents and acquaintances from calling the child by the name of the parents' choice. Therefore the decision of the Finnish authorities did not interfere with the exercise of the applicants' rights under this provision.

This part of the application must therefore be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants complain under Article 13 (Art. 13) of the Convention that they have not had access to an effective remedy because the authorities allegedly failed to elaborate sufficient reasoning in their decisions.

Article 13 (Art. 13) reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that Article 13 (Art. 13) guarantees an individual, who has an arguable claim to the status of victim of a violation of the rights set forth in the Convention, the availability of a remedy at national level in order to have his claim decided and, if appropriate, to obtain redress (see e.g. Eur. Court HR, Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 42, para. 113 and Eur. Court HR, Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 69, para. 161). However, it is not necessary under Article 13 (Art. 13) that an individual obtain a favourable decision on the substance of his claim.

Even assuming that there were an arguable claim the Commission observes that the applicants could appeal to the County Administrative Board and the Supreme Administrative Court. Both of these instances were competent to examine the merits of the applicants' claims. Since a favourable outcome is not guaranteed by Article 13 (Art. 13), the Commission considers the above-mentioned remedies effective within the meaning of this Article. In addition, the Commission notes that the Board gave a reasoned decision which was confirmed by the Court.

Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicants complain that they were subject to discrimination as regards the legal position of their ethical conviction compared to that of a religion. The applicants invoke Article 14 read in conjunction with Article 9 (Art. 14+9) of the Convention.

Article 14 (Art. 14) of the Convention provides as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 9 (Art. 9) and the other

provisions of the Convention defining substantive rights are supplemented by Article 14 (Art. 14) which prohibits discrimination in the enjoyment of those rights. A measure which in itself could conform to one of the normative provisions may nevertheless violate that provision taken in conjunction with Article 14 (Art. 14) if applied in a discriminatory manner. Article 14 (Art. 14) cannot, however, be applied unless the facts in question fall within the ambit of one of the other substantive provisions of the Convention (cf. Eur. Court HR, Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

The Commission has found above that the applicants' complaint that their right to freedom of thought was violated by the refusal to register the proposed name falls within the ambit of Article 9 (Art. 9). Therefore also Article 14 (Art. 14) is applicable.

The Commission notes, however, that the names at issue were rejected because of their form and spelling. There is nothing to suggest that the relevant treatment of the applicants would have been any different had they invoked religious reasons during the proceedings. In these circumstances the Commission finds no substantiation for the applicants' allegation that the refusal discriminated against them by virtue of their ethical conviction.

Thus this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber