

In the case of *Guillot v. France* (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A (2) as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
 Mr L.-E. Pettiti,
 Mr R. Macdonald,
 Mr A. Spielmann,
 Mr J. De Meyer,
 Mr R. Pekkanen,
 Mr J.M. Morenilla,
 Mr A.B. Baka,
 Mr P. Jambrek,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 24 April and 23 September 1996,

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

Notes by the Registrar

1. The case is numbered 52/1995/558/644. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.
2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 29 May 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 22500/93) against the French Republic lodged with the Commission under Article 25 (art. 25) by two French nationals, Mrs Marie-Patrice Guillot, née Lassauzet, and Mr Gérard Guillot on 28 March 1987.

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

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings. The President gave the

applicants leave, as lawyers, to present their own case to the Court (Rule 30 para. 1).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 8 June 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr A. Spielmann, Mr J. De Meyer, Mr R. Pekkanen, Mr J.M. Morenilla, Mr F. Bigi and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently, Mr A.B. Baka, substitute judge, replaced Mr Bigi, who was unable to take part in the further consideration of the case (Rule 22 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicants and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 27 November 1995. On 30 January 1996, the Secretary to the Commission indicated that the Delegate did not intend to reply in writing.

5. On 7 February 1996 the Registrar received a letter from the applicants requesting that their daughter be heard by the Court. On 21 February 1996 the Chamber decided not to grant this request (Rule 41 para. 1).

6. On 17 August 1995 the Commission had produced the documents of the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 April 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mrs M. Dubrocard, magistrat, on secondment to the Legal
Affairs Department, Ministry of Foreign Affairs, Agent,
Mrs M.-H. Hurtaud, magistrat, on secondment to the
Department of Civil Affairs, Ministry of Justice,
Mr G. Bitti, member of the Human Rights Office,
European and International Affairs Department,
Ministry of Justice, Counsel;

(b) for the Commission

Mr F. Martínez, Delegate;

(c) one of the two applicants, Mr Guillot.

The Court heard addresses by Mr Martínez, Mr Guillot and Mrs Dubrocard.

AS TO THE FACTS

I. Circumstances of the case

8. Mr Gérard Guillot and his wife, Mrs Marie-Patrice Guillot, née Lassauzet, chose to give their daughter, born on 7 April 1983, the

forenames "Fleur de Marie, Armine, Angèle". After consulting State Counsel at Nanterre, the registrar of births, deaths and marriages for Neuilly-sur-Seine, to whom the child's birth had been declared, refused to register the first of these names on the ground that it did not appear in any calendar of saints' days.

The birth certificate drawn up at the time mentions only "Armine, Angèle".

A. Proceedings in the Nanterre tribunal de grande instance

9. In a judgment of 7 February 1984 the Nanterre tribunal de grande instance dismissed the applicants' main application for an order that the forename "Fleur de Marie" be added as their daughter's first forename, but granted their application made in the alternative for the addition of "Fleur-Marie". It held as follows:

"State Counsel objected to the application on the grounds that whereas 'Fleur' and 'Marie' are, when taken separately, acceptable first forenames under French law, that is not the case with 'Fleur de Marie'.

The applicants submit that 'Fleur de Marie' is composed of two forenames recognised by French law, which when linked by the preposition 'de' form the name of the heroine of Eugène Sue's *Mystères de Paris*, a work which is world-famous.

However, although a forename may be composed of up to two names already in use, it cannot, as in the present case, consist of a combination of two names linked by a preposition since it would cease to be a mere reuse of a traditional boy's or girl's name and become an image invented at the whim of individuals, for all that they might possess as lively an imagination as Eugène Sue.

In any event, this was not the intention of the legislature when it regulated the choice of forenames. Consequently, the main claim in the application must be dismissed but there is no reason not to grant the claim made in the alternative relating to the forename 'Fleur-Marie'.

For these reasons,

...

Dismisses the applicants' application for an order that the forename 'Fleur de Marie' be added as the first forename of the child born on 7 April 1983 and already called Armine Angèle.

Declares, on the other hand, that the forename 'Fleur-Marie' is acceptable under French law and orders that it be added as the first forename of the above-mentioned child.

Orders that the operative provision of this judgment ordering the addition of the first forename be entered in the margin of the child's birth certificate.

Orders that no certified copy of the certificate shall be delivered without the said addition.

..."

B. Proceedings in the Versailles Court of Appeal

10. Mr and Mrs Guillot appealed to the Versailles Court of Appeal, which on 18 September 1984 upheld the judgment of the court below in the following terms:

"...

Although in spite of the mandatory requirements of the Law of 11 Germinal Year XI, which provides that forenames must be chosen from the various calendars in use, case-law is tending towards a more liberal approach in order to take account of changes in social mores, local customs and family traditions, it is necessary to prevent parents from choosing forenames which are excessively whimsical and so eccentric that the child is likely to be the first victim. This is the case with the forename 'Fleur de Marie', notwithstanding that it was the name of the heroine of a famous literary work.

On the other hand, there is no reason not to allow the claim made in the alternative that the forename should consist of the two forenames 'Fleur' and 'Marie' juxtaposed.

..."

C. Proceedings in the Court of Cassation

11. Relying in particular on Articles 8, 9 and 14 of the Convention (art. 8, art. 9, art. 14), the applicants appealed on points of law to the Court of Cassation (First Civil Division), which dismissed their appeal on 1 October 1986 on the following grounds:

"...

... the provisions of section 1 of the Law of 11 Germinal Year XI are not contrary to ... Articles [8, 9 and 14] (art. 8, art. 9, art. 14) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which merely establish general principles relating to respect for private and family life, freedom of conscience and the prohibition of discrimination between individuals;

...

... the Court of Appeal, which was not obliged to go into the finer detail of the parties' reasoning, held, in the exercise of its unfettered discretion, that the chosen forename, because it was eccentric and excessively whimsical, and notwithstanding that it was the name of the heroine of a famous literary work, was likely to harm the interests of the child; in so doing, the Court of Appeal justified its decision in law...

..."

II. Relevant domestic law and practice

A. The rules applicable at the material time

1. Civil Code

12. Article 57 of the Civil Code provided:

"The birth certificate shall state the date, time and place of birth, the sex of the child and the forenames to be given it,

the forenames, surnames, ages, occupations and addresses of the father and mother and, if applicable, those of the person registering the birth ...

...

The forenames which appear on a child's birth certificate may, where there is a good and lawful reason, be amended by an order of the tribunal de grande instance made on an application by the child or, during the child's minority, by the child's legal representative. The order shall be made and published in accordance with the conditions set out in Articles 99 and 101 of this Code. The addition of forenames may likewise be ordered."

2. The Law of 11 Germinal Year XI and its application

13. Section 1 of the Law of 11 Germinal Year XI provided:

"... only names in use in the various calendars, and those of known figures of ancient history may be entered as forenames in birth registers; registrars shall not enter any other names in their registers."

The ministerial circular of 12 April 1966 amending the general circular on civil status (Official Gazette of 3 May 1966) laid down in particular:

"... CHOICE OF FORENAMES

...

General principles

...

Practical application

(a) It should, however, be observed that the impact of custom in this field has considerably reduced the restrictions which were initially placed on the acceptance of forenames by the provisions of the Law of 11 Germinal Year XI taken literally.

It is true that these provisions are of practical value in that they provide registrars of births, deaths and marriages with a bulwark against innovations which appear to them to be such as might later harm children's interests and which would therefore be unacceptable.

In practice, registrars of births, deaths and marriages, who have to take the immediate decision whether a forename is acceptable, can hardly be expected to compile a list of the exact resources of the calendars and of ancient history in order to determine whether a given forename is included in this heritage or not. In practice they are required to use common sense when exercising their discretion, so as to ensure that the law is applied with a measure of realism and liberality, in other words in such a way that the changes in social mores which have hallowed certain usages are not ignored and that surviving local characteristics and even family traditions which can be shown to exist are respected. Registrars must not lose sight of the fact that it is for parents to choose forenames and that, to the fullest extent possible, any wishes they may have expressed should be taken

into account.

...

(b) In addition to the forenames normally allowed within the strict limits of the Law of Germinal, the following may therefore possibly be accepted, having regard to the foregoing considerations and, where applicable, subject to appropriate evidence being produced:

1. certain forenames of mythological origin (such as Achille, Diane, Hercule, etc.);
2. certain forenames peculiar to local languages of the national territory (Basque, Breton, Provençal, etc.);
3. certain foreign forenames (such as Ivan, Nadine, Manfred, James, etc.);
4. certain forenames which correspond to words that have a specific meaning (such as Olive, Violette, etc.) or even old surnames (such as Gonzague, Régis, Xavier, Chantal, etc.);
5. compound forenames, provided that they do not include more than two simple names (such as Jean-Pierre or Marie-France but not, for example, Jean-Paul-Yves, which would be a combination of three forenames).

(c) Exceptionally, registrars of births, deaths and marriages may also accept, but with some caution:

1. certain diminutives (such as 'Ginette' for Geneviève, 'Annie' for Anne, or even 'Line', which is derived from feminine forenames containing that ending);
2. certain shortened forms of double names (such as 'Marianne' for Marie-Anne, 'Marlène' or 'Milène' for Marie-Hélène, 'Maité' for Marie-Thérèse, 'Sylvianne' for Sylvie-Anne, etc.);
3. certain variations in spelling (for example Michèle or Michelle, Henri or Henry, Ghislaine or Guislaine, Madeleine or Magdeleine, etc.).

(d) Ultimately, it would appear that registrars of births, deaths and marriages should only refuse to enter names chosen by parents which have not been demonstrably established as forenames in France by sufficiently widespread use. Thus, in particular, registrars should systematically refuse to enter forenames which are purely whimsical or names which, by reason of their nature, meaning or form cannot normally constitute forenames (surnames, names of objects, animals or qualities, words used as stage names or forenames or as pseudonyms, names that are onomatopoeic or recall political events).

..."

In a judgment of 10 June 1981 the Court of Cassation stated that "parents can in particular choose as forenames, subject to the general reservation that, in the child's interest, they are not found to be ridiculous, names in use in the various calendars; and while no official list of permitted forenames exists, there is no ground for requiring that the calendar relied on emanate from an official authority" (First Civil Division, 10 June 1981, Recueil Dalloz Sirey 1982, p. 160).

3. The Law of 6 Fructidor Year II

14. The Law of 6 Fructidor Year II provided - and still provides:

Section 1

"No citizen may bear a surname or forename other than those stated on his birth certificate; those who have abandoned their original names shall resume them."

Section 2

"Neither may any nickname be added to the original name, unless it has hitherto been used to distinguish members of the same family and does not evoke feudal or nobiliary attributes."

Section 4

"All public servants are expressly prohibited from referring to citizens in documents otherwise than by their surnames, the forenames shown on the birth certificate or the nicknames permissible under section 2 and from recording any other names in the certified copies or short-form certificates which they issue subsequently."

B. The new rules

15. Law no. 93-22 of 8 January 1993 on civil status, the family and children's rights, which created the office of family-affairs judge, repealed the Law of 11 Germinal Year XI and replaced the last two paragraphs of Article 57 of the Civil Code by the following provisions:

"A child's forenames shall be chosen by its father and mother ... The registrar of births, deaths and marriages shall immediately enter the chosen forenames on the birth certificate. Any forename recorded on the birth certificate may be chosen as the usual forename.

Where the said forenames or any one of them, either taken alone or linked to the other forenames or to the surname, appear to the registrar to be contrary to the child's interests or to the right of third parties to protect their surname, the registrar of births, deaths and marriages shall immediately so inform State Counsel, who may then refer the matter to the family-affairs judge.

If the judge considers that the forename is contrary to the child's interests or infringes the right of third parties to protect their surnames, he shall order the name to be deleted from the registers of births, deaths and marriages. If the parents fail to choose an alternative name compatible with the aforementioned interests, he shall give the child another forename of his own choosing. The decision shall be noted in the margin of all documents relating to the child's civil status."

On the other hand, the Law of 8 January 1993 did not repeal the Law of 6 Fructidor Year II.

PROCEEDINGS BEFORE THE COMMISSION

16. Mr and Mrs Guillot applied to the Commission on 28 March 1987. They alleged that the refusal by the authorities to enter the forename they had chosen for their child on her birth certificate constituted a violation of the right to respect for their private and family life guaranteed in Article 8 of the Convention (art. 8). They also alleged an infringement of their right to due process in that the submissions of State Counsel had not been communicated to them before the Versailles Court of Appeal gave its judgment, contrary to Article 6 of the Convention (art. 6).

17. On 10 October 1994 the Commission declared the application (no. 22500/93) admissible as regards the first of the complaints. In its report of 12 April 1995 (Article 31) (art. 31), it expressed the opinion by thirteen votes to eleven that there had not been a violation of Article 8 (art. 8). The text of the Commission's opinion and of the two separate opinions contained in the report are reproduced as an annex to this judgment (1).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-V), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

18. In their memorial the Government asked the Court "to reject the application ... and to find in accordance with the opinion expressed by the Commission in its report of 12 April 1995 that the complaint based on a violation of Article 8 of the Convention (art. 8) is not founded".

AS TO THE LAW

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

19. In the applicants' submission, the refusal of the registrar of births, deaths and marriages and subsequently of the courts to allow them to name their daughter "Fleur de Marie" amounted to a violation of their right to respect for their private and family life. They relied on Article 8 of the Convention (art. 8), which provides:

"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."

20. The Government and the Commission contested that submission.

A. Applicability of Article 8 (art. 8)

21. The Court notes that Article 8 (art. 8) does not contain any explicit provisions on forenames. However, since they constitute a means of identifying persons within their families and the community, forenames, like surnames (see, *mutatis mutandis*, the *Burghartz v. Switzerland* judgment of 22 February 1994, Series A no. 280-B, p. 28, para. 24, and the *Stjerna v. Finland* judgment of 25 November 1994,

Series A no. 299-B, p. 60, para. 37), do concern private and family life.

22. Furthermore, the choice of a child's forename by its parents is a personal, emotional matter and therefore comes within their private sphere. The subject matter of the complaint thus falls within the ambit of Article 8 (art. 8), and indeed this was not contested.

B. Compliance with Article 8 (art. 8)

23. In the present case it is first necessary to determine whether the refusal to allow Mr and Mrs Guillot to name their daughter "Fleur de Marie" raises an issue of failure to "respect" their private and family life under Article 8 para. 1 (art. 8-1). In this connection, the degree of inconvenience caused to the applicants is decisive (see the Stjerna judgment previously cited, p. 63, para. 42 in fine).

24. Mr and Mrs Guillot stated that they had been disappointed not to be able to give their daughter the name they had chosen after careful consideration and to which they were attached. Convinced that the French courts had simply substituted their own preference for theirs, they had, in addition, been left with a feeling of injustice.

Moreover, they suffered daily from the consequences of the situation thus created. Every time they had to go through formalities concerning the child, they had the painful task of explaining the difference between her usual forename ("Fleur de Marie") and the one recorded at the registry of births, deaths and marriages. They added that unless her forename was changed by court order, their daughter would be obliged to go through the same explanatory process throughout her life.

25. According to the Government, the consequences of the refusal to register the forename in issue were too limited to constitute a failure to respect the applicants' private and family life. The applicants' daughter ordinarily went by the forename of "Fleur de Marie" and nothing prevented her from doing so in all her private dealings or, other than in official documents, from using it in her signature. In addition, in order to take into account both the wishes of the parents and the paramount interest of the child, the judicial authorities had held that the forename "Fleur-Marie", which was very similar to the forename initially chosen, was acceptable.

26. The Commission agreed with this latter view in substance.

27. The Court can understand that Mr and Mrs Guillot were upset by the refusal to register the forename they had chosen for their daughter. It notes that this forename consequently cannot appear on official documents and deeds. In addition, it finds it probable that the difference between the child's forename in law and the forename which she actually uses - she is called "Fleur de Marie" by her family and is known by that name socially - entails certain complications for the applicants when acting as her statutory representatives.

However, the Court notes that it is not disputed that the child regularly uses the forename in issue without hindrance and that the French courts - which considered the child's interest - allowed the application made in the alternative by the applicants for registration of the forename "Fleur-Marie" (see paragraphs 10 and 11 above).

In the light of the foregoing, the Court does not find that the inconvenience complained of by the applicants is sufficient to raise an issue of failure to respect their private and family life under

Article 8 para. 1 (art. 8-1). Consequently, there has not been a violation of Article 8 (art. 8).

FOR THESE REASONS, THE COURT

1. Holds unanimously that Article 8 of the Convention (art. 8) applies in the present case;
2. Holds by seven votes to two that there has been no breach of it (art. 8).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 October 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

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

Initialled: R.R.

Initialled: H.P.

JOINT DISSENTING OPINION OF JUDGES MACDONALD AND DE MEYER

(Translation)

We regret that we are unable to agree with the present judgment.

There has certainly been an interference with the exercise by the applicants of their right to respect for their private and family life, which without any doubt includes the right to choose a forename. The freedom to choose was restricted by the refusal to enter in the register of births, deaths and marriages the forename given to the child by her parents.

We have no difficulty in accepting that this interference, based on the Law of 11 Germinal Year XI in force at the material time, was lawful and that it pursued a legitimate aim, the protection of the child's interests.

However, we consider that it has not been shown that it was "necessary in a democratic society". Moreover, we do not see how a forename such as "Fleur de Marie" could harm the person so named (1). It would probably be less harmful than the saints' names referred to in the dissenting opinion of Mr Geus or names such as "Cléopâtre", "Hérodiade", "Messaline", "Pilate", "Caligula" or "Néron" made famous in various ways by "known figures of ancient history" and thus perfectly acceptable under the Law referred to above.

1. See also on this subject the dissenting opinion of Mr Geus, with which ten other members of the Commission agreed.

In addition, we note that under French law anyone who is not satisfied with his forename may at any time request that it be changed if he is able to show a "legitimate interest" (2).

2. The Government's representative himself drew attention to this at the hearing on 23 April 1996.