

# EUROPEAN COURT OF HUMAN RIGHTS

**Council of Europe  
Strasbourg, France**

## APPLICATION

*under Article 34 of the European Convention of Human Rights  
and Rules 45 and 47 of the Rules of Court*

### **I. The Parties**

#### **A. The Applicant**

(Fill in the following details of the applicant and the representative, if any).

1. Surname: Johansson
2. First Name(s): Christer Ola Roger
- Sex: Male
3. Nationality: Swedish
4. Occupation: Eco-Engineering
5. Date and Place of Birth: 15 June 1969; Visby, Sweden
6. Permanent Address: Fam Christer and Annie Johansson; Gudings Alva, 62346 HEMSE, Sweden
7. Telephone Number: +46-498-480458
8. Present Address (if different from 6.): N/A

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1. Surname: Johansson
  2. First Name(s): Annie
  - Sex: Female
  3. Nationality: Indian
  4. Occupation: Housewife/Mother
  5. Date and Place of Birth: 17 September, 1971; Ahmednagar, India
  6. Permanent Address: Fam Christer and Annie Johansson; Gudings Alva, 62346 HEMSE, Sweden

7. Telephone Number: +46-498-480458

8. Present Address (if different from 6.): N/A

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1. Surname: Johansson

2. First Name(s): Domenic Samuel

Sex: Male

3. Nationality: Swedish/Indian

4. Occupation: N/A

5. Date and Place of Birth: 09 September 2001; Visby, Sweden

6. Permanent Address: Fam Christer and Johansson; Gudings Alva, 62346 HEMSE, Sweden

7. Telephone Number: +46-498-480458

8. Present Address (if different from 6.):

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9. Name of Representative: Roger Kiska (**Alliance Defense Fund**)

10. Occupation of Representative: Lawyer

11. Address of Representative: 46 Kosicka Ulica; 821 08 Bratislava, Slovak Republic

12. Tel N°: +421 918 427 157

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**Co-Representatives:**

9. Name of Representative: Ruby Harrold-Claesson

10. Occupation of Representative: Lawyer

11. Address of Representative: Ströms Väg 37, 424 71 Olofstorp, Sweden

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9. Name of Representative: Michael Farris (**Home School Legal Defense Association**)

10. Occupation of Representative: Lawyer

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9. Name of Representative: Michael Donnelly (**Home School Legal Defense Association**)

10. Occupation of Representative: Lawyer

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**B. The High Contracting Party**

(Fill in the name of the State(s) against which the application is directed)

13. Kingdom of Sweden

**II. Statement of the Facts**

*(See § 19(b) of the Notes)*

14.

**General Overview**

On June 26th, 2009, Domenic Johansson, a seven year-old boy (born on September 9, 2001) who is a dual citizen of Sweden and India, was seated in a commercial airliner awaiting departure of a flight to India. Without a court order or any kind of preliminary notification, Swedish authorities boarded the plane and removed Domenic from the custody of his parents, Christer Johansson (a Swedish citizen) and Annie Johansson (an Indian citizen). The sole purpose of the removal of Domenic was to prevent his parents from moving with him to India.

At the time of the removal, the sole issue that motivated the actions of the Swedish government was the fact that Domenic was being homeschooled. No other information concerning minor medical issues (which have arisen since the boy was unlawfully removed from his parents) was known to any Swedish authority at the time he was peremptorily removed from his parents.

Swedish officials removed this boy from an international flight solely to prevent his parents from moving to another nation and from educating him in a manner that is lawful in India, in Sweden, and in a majority of nations.

Since this extraordinary separation on June 26th, 2009, Mr. and Mrs. Johansson have been allowed extremely limited contact with their son and only under overbearing state supervision. All attempts by the parents to offer alternatives for Domenic's education, as well as their offers of sincere cooperation on the other minor matters that have since been addressed, have been rebuffed by the Swedish authorities. It now appears obvious that the Swedish government intends to keep permanent custody of this boy simply because his parents wished to move to India and to homeschool him.

### **Procedural History and Background**

Compulsory school age in Sweden is at seven years. Prior to the time that Domenic turned seven, Mr. Johansson contacted the Swedish Ministry of Education to inquire about home education. He was told that he should contact his local school principal to obtain materials for use in Domenic's home education program.<sup>1</sup> Mr. Johansson reasonably interpreted this statement to affirm his understanding that homeschooling was a legally-available choice for his son.

Shortly thereafter, Mr. Johansson made contact with Mr. Jerker Eneqvist, the principal of the closest public school, Sudret northern RO. Mr. Eneqvist not only refused to supply curriculum as had been suggested by the Ministry of Education, but categorically insisted that Domenic "had to go school."

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<sup>1</sup> Homeschooling is legal in Sweden under the following statutory conditions:

A school-aged child shall be allowed to fulfill the school obligation in other ways than what is stated in this law, if it appears to be a fully satisfactory alternative to the education otherwise available to the child according to the law. Possibilities [for the authorities] to have an insight into the activities shall be provided. Permission can be given for up to one year at a time. During this time it shall be tried how the operation turns out. Permission shall immediately be withdrawn if necessary insight into the operation is not granted, or if for other reasons it can be assumed that necessary circumstances for permission no longer exists. (Svensk författningssamling (1985:1100); 10 kap. Särskilda utbildningsformer)

Mr. Johansson replied that he had the right to homeschool his son, to which Mr. Eneqvist angrily asserted, “You don’t have the right to educate your son and I will be taking this further.”

In reliance upon Swedish law and the assurances of the Ministry of Education (not to mention the guarantees of the Universal Declaration of Human Rights and other legally binding international human rights instruments), the Johansson’s began to homeschool their son Domenic in spite of the lack of cooperation of the local school officials. Mrs. Johansson, highly educated with two master’s degrees herself, acquired suitable materials for their son and began the process of Domenic’s formal education.

Ignoring the most basic principles of due process of law, the local board of education refused to act on the Johansson’s request and purported to make a decision relative to the home education of Domenic Johansson—all the while refusing to grant any form of hearing to the Johansson family despite numerous requests for an opportunity to be heard.

A member of the Board, Lena Celion, told Mr. Johansson, “I don’t have time to meet with you.” The school board informally communicated its decision to the Johansson family with the mere repetition of the principal’s insistent, peremptory command that Domenic must attend the local government school. At no point in time did any official associated with the local school authorities communicate any alternative choices for the Johanssons. There was a single command—attend the government schools or else.

In January, 2009, Mr. Johansson insisted on a meeting with the local school superintendent. The school convened a meeting with other officials instead—the Chief of Management, the Chief of the local school and a lawyer for the school authorities. When the school authorities persisted in their demand that Domenic attend only the government school,

Mr. Johansson asked if they could leave the country. The officials replied, “You may leave the country, but Domenic must attend school.”

On February 11, 2009, without the benefit of any prior adjudication, the Child and Education Department ordered Christer Johansson to pay a penalty of a fine of 250 SKr per school day. This written demand was given to Christer Johansson on February 13th, 2009.

On May 27th an action concerning the enforcement of the fines—now totaling 15,000 SKr—was brought by the Child and Education Department before the County Court of Gotland. The Court refused to impose the fines on the grounds that it was futile to do so this late in the school year and would not achieve the desired result. The County Court wrote, “It [is] futile that the assessed fines would lead to the desired outcome, which is that Domenic attends school.” In so holding the court recognized that the Johansson’s had the right to homeschool their son and that they would not force the fines onto the family for exercising that right.

During the course of the hearing, Mr. Johansson advised the judge that the family was planning to move out of the country in six weeks to which the judge replied, “Ok, fine.” When the judge asked for the date of travel, Mr. Johansson told the court that they would leave on June 26th.

No court order was entered prohibiting the Johansson’s from moving to India as planned on June 26th, 2009.

This was all that was known to the Swedish authorities at the time they invaded the Turkish Airlines flight and removed a Swedish-Indian citizen, Domenic, from the plane to prevent him from moving to India with his parents.

### **Post-Seizure Developments and Procedural History**

Swedish authorities have seized upon two relatively minor medical issues that they have discovered subsequent to the seizure of this young boy from his parents. Although Domenic had seen the dentist on numerous previous occasions, at the time he was removed from the airliner it had been 18 months since he had a dental check-up and had cavities that needed attention.

Additionally, it was discovered that he had not been vaccinated for childhood illnesses. Such vaccinations are not required by law in Sweden and are merely recommended. The family contended that they intended to have him vaccinated in India in light of the medical practice and needs in that nation.

Presumptively, in the twelve months since the boy was seized and has been in the exclusive custody of Swedish authorities, these relatively minor medical issues have been attended to and are no longer of any concern. Moreover, neither of these issues was known to Swedish authorities at the time they removed the boy from the international flight and cannot be used to justify the legality of their seizure in an *ex post facto* fashion.

Since the seizure of the boy was effected without any court order—and contrary to the implied direction of the court determination held in May, 2009—the first review of the seizure of Domenic by the authorities was long after this boy was in custody and away from his parents.

In addition, because the government of Sweden takes a block holiday for the month of July, the first post-seizure hearing was not until August 4th, 2009, before the Lansrattan of Gotland. This court delivered its decision, by a 3 to 1 vote, on August 13th, 2009, upholding the Gotland social workers' administrative determination to keep Domenic in foster care.

In its decision the court relied on a speculative psychiatric report that concluded, "It is not possible to say what consequences isolation has caused Domenic's health and development, but

the Provincial Court, can say that Domenic’s physical health has already been compromised by the lack of [dental and medical] care.” Opinion at 4.

The unsubstantiated inference that Domenic might be impacted by “isolation” arose from the mere fact that he had been homeschooled. There was nothing in the record to indicate that the psychiatric practitioner had any relevant experience or scientific basis for his assertion that homeschooling leads to “isolation” or other improper developmental condition, yet the court adopted this unsubstantiated opinion.

While noting that Domenic’s physical health had been “compromised”—the psychiatric report also notes that remediation of the dental matters had been accomplished by the time of the hearing. There is no statement on the record to determine whether or not the Swedish government officials had had Domenic vaccinated which is recommended by physicians but not required by Swedish law.

In his dissenting opinion, court member Britt Ronsten held that issues raised by social services were insufficient to justify removal of Domenic from his parents. He wrote: “[T]he shortcomings that Social Services has brought forward neither separately nor all together are presently reason enough to give Domenic Johansson care according to LVU.<sup>2</sup> There is therefore no such lack of care that LVU is applicable. I believe that the family in the future will accept help from Social Services and that the family will let Domenic start school this fall.”

This opinion took note of the fact that during the proceedings the parents promised that they would take whatever medical steps were needed and had promised to enroll Domenic in school if he would be returned to their custody. The family had also indicated that they were no longer in a position to move to India.

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<sup>2</sup> LVU is an acronym for the legal standard which allows Swedish authorities to remove children from parents.

An appeal was then taken to the 1<sup>st</sup> chamber of the Kammarrattan of Stockholm. This court heard the appeal on November 30th, 2009 and upheld the decision of the Lansrattan. The court issued its decision on December 17th, 2009. In its ruling, the court stated that it “finds no reason to doubt that Annie Johansson and Christer Johansson care for Domenic and that they try from their ability to give him the care that they find to be best.” Opinion at 6.

The Court then relied on a psychiatric exam that was conducted just a few months after Domenic was taken from his parents that suggests he was “developmentally delayed.” Member of the Court Maud Steen dissented from the ruling noting that “voluntary actions are not exhausted and that therefore they lack reason for care according to LVU. Annie Johansson’s and Christer Johansson’s appeal should therefore be supported.” Opinion at 6-7.

On January 27th, the Swedish Supreme Administrative Court, the Regeringsrätten, denied the appeal from these decisions exhausting the domestic appeals in this case.

There is no reunification plan that has ever been presented to the family. They have never been offered to have the custody of their son returned on the condition that they not leave the country and enroll him in public school. Insofar as has been communicated to the family through official court orders, Domenic is to remain in the custody of the Swedish officials on what appears to be a *de facto* permanent basis.

### III. Statement of Alleged Violation(s) of the Convention and/or Protocols and of Relevant Arguments

(See § 19(c) of the Notes)

15.

#### Introduction

Applicants seek redress of violations of the European Convention of Human Rights under Protocol 4, Article 2 [Freedom of Movement]; Article 8 [Right to Respect for Private and Family Life]; Protocol 1, Article 2 [Right to Education]; and Article 9 [Freedom of Thought, Conscience and Religion].

For the state to lawfully restrict these guaranteed freedoms, it must meet three criteria: (a) the interference must be prescribed by law; (b) the interference must have a legitimate aim; and (c) the interference must be necessary in a democratic society. Generally speaking, the interference in question must be the act of a state<sup>3</sup>; however, the European Court of Human Rights has held that any *inter partes* intervention by a court constitutes interference if this intervention challenges a *de facto* situation safeguarded by the Convention<sup>4</sup> or if it gives effect to law that conflicts with prevailing European Convention law<sup>5</sup>. None of the interferences discussed herein meet these necessary criteria. To the contrary, Sweden's actions have grossly violated the convention rights of the applicants in all of these areas.

#### **(A) Prescribed By Law:**

In order to be prescribed by law, the law in question must be accessible and foreseeable in its effects. It thus cannot suffer from vagueness; that the "quality" of the law must clearly and

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<sup>3</sup> ECHR, 23 November 1993, *A v. France*, Series A, No. 277-B, § 36.

<sup>4</sup> ECHR, 23 June 1993, *Hoffman v. Austria*, Series A, No. 255-C: JDI, 1994, p. 778, § 29.

<sup>5</sup> ECHR, 20 April 1993, *Sibson v. the United Kingdom*, Series A, No. 258-A, § 27.

precisely define the conditions and forms of any limitations on basic Convention safeguards and must be free from any arbitrary application.<sup>6</sup>

The Court, in *Metropolitan Church of Bessarabia* held that domestic law, to meet the clarity requirement, must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention: “in matters affecting fundamental rights it would be contrary to the rule of law—one of the basic principles of a democratic society enshrined in the Convention—for a legal discretion granted to the executive to be expressed in terms of an unfettered power; consequently the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.”<sup>7</sup>

#### **(B) Legitimate Aim:**

The second prong of the analysis of interference is whether the interference in question pursues a legitimate aim. Restrictions on rights guaranteed by the European Convention of Human Rights must be narrowly tailored and must be adopted in the interests of public and social life, as well as the rights of other people within society.<sup>8</sup>

The lack of legitimacy of Domenic’s placement into foster care and forced school attendance is exacerbated in this case precisely because, as detailed above, home education is legal in Sweden. Furthermore, had the local authorities really been interested in Domenic’s well being, they would have assisted the Johansson’s in their request for educational materials for Domenic rather than instigating the separation of the family.

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<sup>6</sup> See: ECHR, 26 April 1979, *Sunday Times v. the United Kingdom*, Series A, No. 30 § 49 *et seq*; ECHR, 24 March 1998, *Olsson v. Sweden*, Series A, No. 130 § 61f; *Kruslin v. France*, *op. cit.*, § 36. Also *cf.* ECHR, 22 November 1995, *SW v. the United Kingdom*, Series A, No. 335-B, § 36, on how the development of criminal law by the courts should be reasonably foreseen.

<sup>7</sup> ECHR, 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, Reports 2001-XII, § 109: JDI 2002, p. 313.

<sup>8</sup> See: F. Sudre, *Droit International et Europeen des droits de l’homme*, PUF, Droit fundamental, 1999, p. 108.

Affidavits attached to this application as annex (d) clearly establish that those closest to the family believed Christer and Annie Johansson to be loving parents who always looked to Domenic's best interests when making decisions as to his upbringing. This love extended to decisions about his education and his healthcare. There was no legitimate aim pursued by the State in substituting its judgment about Domenic's upbringing over that of his parents.

**(C) Necessary in a Democratic Society:**

The final criterion that must be met for government interference with Convention protections to be legitimate is that the interference in question must be necessary in a democratic society. The European institutions have stated that the typical features of a democratic society are pluralism, tolerance and broadmindedness.<sup>9</sup> For such an interference to be necessary in a democratic society it must meet a pressing social need whilst at the same time remaining proportionate to the legitimate aim pursued.<sup>10</sup>

The state has a duty to remain impartial and neutral, since what is at stake is the preservation of pluralism and the proper functioning of democracy, even when the state or judiciary may find some of those views irksome.<sup>11</sup> In the instant case, the Swedish authorities assessed Domenic's home education and health care (an upbringing based upon his parents' religious and philosophical views) as being isolating or deficient. They further believed that he was being neglected and refused a proper education or medical care—neither claim was accurate. These value judgments in themselves contravene Sweden's positive obligation to remain value neutral.

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<sup>9</sup> ECtHR, 30 September 1976, *Handyside v. the United Kingdom*, Series A, No. 24, § 49 *et seq.*

<sup>10</sup> *Sunday Times v. the United Kingdom*, *op. cit.*, § 63 *et seq.*

<sup>11</sup> ECHR, 30 January 1998, *United Communist Party of Turkey and Others v. Turkey*, Reports 1998-I, p. 25, § 57.

The reality was quite different. First, the family's home education of Domenic under the circumstance and conditions which Domenic was being educated is legal in Sweden and was being conducted appropriately by a highly qualified person, Annie Johansson, who has two Master's Degrees. Second, the Johansson's made efforts to engage the local authorities who stubbornly refused to provide due process as required under the law. The authorities also refused to provide the proper school texts for Domenic's education. Third, the State was ignorant of the Johansson's philosophical convictions regarding medical care and ensuring for Domenic's health through natural means as preferred to drugs and pharmaceuticals.

**(ii) Protocol 4, Article 2**

Freedom of movement, including leaving one country for another, is a fundamentally-protected right and is recognized and protected as such under Protocol 4, Article 2 of the European Convention of Human Rights. Freedom of Movement is also a protected right in Sweden under Article 45 of the Charter of Fundamental Rights of the European Union.<sup>12</sup>

It is undisputed in this case that there has been a *de facto* restriction upon Domenic Johansson's right to liberty of movement from Sweden to India within the meaning of Protocol 4, Article 2 of the Convention.<sup>13</sup> Domenic Johansson was lawfully boarded on an airplane in transit to a nation where he was also lawfully permitted to live and where he enjoys citizenship rights. He was prevented from doing so by Swedish police and Social Services, who thereafter also confiscated identifying documents required for him to travel or obtain an Indian passport.

This Court has noted that when assessing whether a restriction of freedom of movement was justified, a similar standard as that used with regard to Articles 8-11 must be utilized:

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<sup>12</sup> *Charter of Fundamental Rights of the European Union*, (2000/C 364/01) (18.12.2000).

<sup>13</sup> *Cf. ECHR, Case of Timishev v. Russia*, Application nos. 55762/00 and 55974/00, judgment of 13 December 2005, 44.

whether the impugned restriction is “according to the law,” pursues one or more legitimate aims and is “necessary in a democratic society.”<sup>14</sup>

In the instant case, neither Domenic Johansson nor his parents committed any crime or posed any danger to the *ordre public*. Nor was there any danger to the rights and freedoms of others posed by the families move to India. Quite the opposite in fact, as the family was moving to assist orphanages in India to operate more effectively. The restriction of Domenic’s right to liberty of movement also did not pose a threat to national security or public safety. This leaves only the protection of health and morals as a justification for the impugned interference with Domenic’s Convention rights. This justification lacks any serious credibility. As has been established above, the love and diligence in Domenic’s upbringing shown by the applicants is in stark contrast to the actions of the state which have served to permanently damage the family and harm Domenic. Whereas Annie and Christer Johansson sought to do all in their power to do what was in Domenic’s best interest, the State instead paid no attention to Domenic’s best interests or physical or psychological well-being. Instead they deprived him of his parents’ care and companionship.

The facts demonstrate that Swedish authorities acted on a subjective basis that Domenic would be better off “in care” than with his parents. This basis has been explicitly rejected by the court in *Olsson v. Sweden*. “It is not enough that the child would be better off if placed in care.”<sup>15</sup>

The Johansson’s were acting within the scope of law in educating Domenic. Anticipating their move to India, they wanted Domenic to be home educated to better facilitate his needs and assimilation to both the Swedish and Indian systems and approached both the school authorities

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<sup>14</sup> See: ECHR, *Raimondo v. Italy*, judgment of 22 February 1994, Series A No. 281-A, p. 19, § 39.

<sup>15</sup> *Olsson v. Sweden* (No. 2) (17 E.H.R.R. 134) App. No. 13441/87 30, October 1992 paragraph 73.

and the local principal seeking teaching materials. Far from isolating him, the family was preparing him for a trip which would have Domenic interacting with children and adults in a way that almost no child his age would have the opportunity to do.

With regards to vaccinations, the family was planning to get local medical counsel in India because they believed that local doctors would be better suited to knowing which vaccinations he needed rather than Swedish doctors. The family was acting in Domenic's best interest and within their legal rights not to vaccinate Domenic in Sweden. The fact that Domenic has not been released from forced care for either the vaccinations or the cavities demonstrates that this is not the real grounds for his being taken into care. If this had been the case, then he would have been released back to the care of his natural parents after being vaccinated and having his dental cavities treated. This is especially true in light of the parent's willingness to cooperate with social services on all other matters. However, Swedish social services has stubbornly refused to return Domenic. Domenic Johansson was removed from that plane only because social services believed it knew better than his parents what was in Domenic's best interest; a belief steeped in discrimination against their religious and philosophical beliefs with regard to Domenic's upbringing and education. Such an abuse of power could never justify the denial of Domenic's and his parent's right to travel.<sup>16</sup> Because Domenic's removal from the plane en route to India and forced foster care was without legitimate aim or just cause, it is a clear and grave violation of his and his parents rights to travel under Protocol 4, Article 2.

### **(iii) Article 8 of the Convention**

The governing case law of this Court dictates that any removal of a child from his natural parents and taking him into public care is a per se interference with the mutual enjoyment

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<sup>16</sup> See: Section (iii) below.

of parents with their children guaranteed by Article 8 of the Convention.<sup>17</sup> This right is a fundamental element of family life.<sup>18</sup> The Court has held in *Olsson* that such a removal is an interference of a very serious order and that such a step must be supported by sufficiently sound and weighty considerations in the interests of the child. Both this Court and the [European] Commission have rightly observed that it is not enough that the child would be better off if placed in care.<sup>19</sup> The Court requires that extreme diligence is required in such matters because of the danger of irreversible harm to both the family and the child.<sup>20</sup>

### *Swedish Social Services Removed Custody without Cause or Evidence*

Applicants argue that not only was there a serious lack of cause and evidence to remove Domenic Johansson from his family's care, but also that the ongoing removal and decreasing rights of visitation constitute a deplorable violation of the Applicants' Convention rights. Applicants contend that the unfettered discretion used by Sweden's social services in the handling of Domenic's case clearly contradicts the principles and protections enshrined by the Convention.

According to Sweden's Childcare Act (Prop 1989/90:28 page 62, 63, 73), forced legal restraint of parents from their child(ren) is a **serious measure** and can only be used when **strong reasons** exist to do so, such as a risk of injury to the child that is clear and concrete. A subjective presumption that the child will be harmed is not sufficient.

In the instant case, the Swedish authorities failed to establish any valid cause for Domenic's abduction prior to its occurrence. In their opinions the Swedish Courts rely on evidence purporting to establish cause for the taking that was gathered only after the fact. The

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<sup>17</sup> See e.g. *Olsson v. Sweden*, (No 2) (1992) 17 EHRR 134, [1992] ECHR 13441/87, ECtHR.

<sup>18</sup> *Elsholz v. Germany*, ECHR decision of 13 July 2000, Report of Judgments and Decisions 2000- VIII, § 43.

<sup>19</sup> *Olsson*, *op. cit.*, P. 72.

<sup>20</sup> ECHR, *H v. United Kingdom*, (judgment of 8 July 1987, Series A No. 120, pp. 59-63, para. 85.

charge that Mr. and Mrs. Johansson are unable to provide care to their son is without a sufficient basis since there was no proper investigation prior to the removal. The haphazard and ad hoc compilation of reasons to justify the taking after the fact cannot be allowed to stand.

In § 2 of the Swedish law concerning protective care/custody of young persons which is relied upon by the child welfare authorities in this case states that a child could be put into protective custody if there is a case of physical or psychological abuse, neglect in the care of the child or any other such condition in the child's home and there is a *substantial* risk that the child's health or development is negatively affected. The assessment of whether or not there is a 'substantial risk' has to be **based on facts and not on assumptions**. The risk **must also be provable and serious (case RÅ 1995 ref 46)**. Paragraph 6 states that the responsible authorities can decide to take a child in protective custody immediately *if* it is probable that the child is in need of such care *and* a decision on the matter cannot be awaited without putting the child at risk *or* the investigation of the matter would be hindered. According to paragraph 14 the authorities are also responsible to see to it that the child's need for visitations with his parents is met as much as is possible.

The grounds set forth by Social Services and those outlined in the administrative courts' judgments fail to meet this standard, and their ongoing harshness with respect to visitation and reunification can only be described as atrocious. The three primary reasons proffered by the Swedish court to justify the continued separation of the Applicant family are minimal justifications or are provably false. The weakness of the reasoning provided by the court is all the more startling in view of the fact that Domenic was publically taken from his family by armed police and social service workers from an airplane on which the family was legally boarded in transit to India to begin a new life, after years of preparation for the move.

The first of the three grounds provided by the Swedish authorities for Domenic's taking is that he has several cavities in his baby teeth. An investigation into the circumstances of Domenic's teeth would have quickly uncovered the fact that Mrs. Johansson has an immediate member of her family who is a dentist in India and to whom the Applicants planned to take Domenic for dental care upon their move to India. Furthermore, as the facts of the case demonstrate, the state of Domenic's dental hygiene was neither known or at issue when he was taken off of the plane and into child welfare custody, and thus cannot be used to justify the outrageous removal.

***Vaccination is NOT legally mandated in Sweden BUT The Parents WERE going to have Domenic vaccinated in India***

The Swedish authorities noted that Domenic had not been vaccinated against possible health threats in India prior to their departure from Sweden. Another cursory investigation would uncover that the family was waiting to move to India prior to undergoing any precautionary medical treatment. The family firmly believes that medical professionals in India are far more uniquely placed to know Domenic's health and vaccination needs locally than would be Swedish medical personnel. Furthermore, the Johansson's are strong adherents to a philosophy promoting a natural and healthy lifestyle, avoiding unnecessary treatment when possible and instead opting for natural methods of care. To this extent, Domenic's medical records show that he was an exceptionally healthy and well taken care of young child. It is clear from these facts, the lack of investigation, and the manner in which the family has been treated by Social Services since Domenic's taking that the State illicitly passed judgment on the family because of their lifestyle views; views based on their religious faith and belief in a natural and healthy lifestyle. These views are protected by Article 9 of the Convention and are neither a risk to Domenic's health, well-being nor to the public welfare of the community.

Finally, Domenic's vaccination status was not known and was not an issue with Swedish authorities until after he was taken into state care. Just as important is the fact that the vaccinations in question are not required under Swedish law.

***Home Education is NOT Abuse and is Explicitly Provided for in Swedish Law***

Equally outrageous are the claims that Domenic was being isolated and not properly educated simply because he was being home educated. According to the Swedish School Act (Chapter 10, paragraph 4), a child is allowed to fulfill his compulsory school attendance by means other than those stated in the Act if the alternative can be considered acceptable in comparison to the education that is otherwise available to the child. Home education, under Chapter 10, paragraph 4 is one of the acceptable means of alternative education included in this paragraph. The comparison between the special educational alternative (in this case home education) and the education that is otherwise available to the child has to be founded on a general assessment. The fact that something that exists in a regular elementary school and does not exist within the special educational alternative does not necessarily mean that the alternative is not acceptable. According to the Swedish School Act, the regulation can be applied without any special external circumstance. The same requirements, in principle, are applied for home schooling as for any other private schooling to make it an acceptable alternative.

Home education, under the Act, is particularly acceptable for children at the primary school level, which is the level at which Domenic is studying. This fact was reinforced by Sweden's judiciary in the case of RÅ 1990 ref 111. The holding of this case upheld the right to home educate where no exceptional circumstances existed for a seven-year-old child (the exact age of Domenic when he was taken into social care custody for home education).

Precisely stated, Domenic's home education was legal in Sweden under both Sweden's statutory and case law. His removal from the family based on a form of education which is legal in Sweden is an outrage.

Based on a totality of the factual record, the lack of evidence before Swedish officials before Domenic's taking, and the legality of the actions of the Johansson's in both home educating and not having Domenic vaccinated, it is clear that Sweden breached Article 8 of the Convention by separating Domenic from his family. It is equally clear that Sweden continues to breach Article 8 by unlawfully prolonging Domenic's separation from his family without cause and for not establishing a future plan for reunification of the family.

**(iv) Article 8 + Protocol 1, Article 2 of the Convention: Parental Rights and the Best Interest of the Child Standard**

The best interests of the child standard that governs child care issues under Article 8 of the Convention, when taken into account in conjunction with the second sentence of Protocol 1, Article 2 of the Convention on respect for parental rights in education, dictates that parents must be respected as the primary educators and caregivers of their children. This concept is also clearly recognized in international law.

The United Nations Convention on the Rights of the Child, for example, clearly states that among the most important rights of the child, besides the right to life, are precisely the right to parental love and the right to education. The Convention also explicitly states that parents, being the ones who love their children most, are those most called upon to decide on the education of their children.<sup>21</sup> This guarantee requires that the State respect the right of parents to educate their children according to their own religious or philosophical beliefs (beliefs which

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<sup>21</sup> United Nations, *Convention on the Rights of the Child*, Articles 5, 18§ 1.

would include pedagogical beliefs) and has also been codified by Article 18(4) of the ICCPR, Article 5(1)(b) of the Convention Against Discrimination in Education, Protocol 1, Article 2 of the European Convention of Human Rights, Article 26(3) of the Universal Declaration of Human Rights, and Article 13 of the International Covenant on Economic, Social and Cultural Rights.<sup>22</sup>

It strains credulity to suggest that the dramatic means used in Domenic's abduction was in his best interests because he was being home educated, a right which is accepted in the educational systems of the vast majority of western democracies. There is, therefore, no proportionality between the actions of the child welfare authorities who have literally destroyed the Johansson family and likely irreparably harmed young Domenic. The decision as to what is or is not in the best interests of the child is first and foremost a decision of the family and one which requires state neutrality. It appears unlikely that sufficient diligence was exercised on the part of child welfare authorities before Domenic was taken into custody.

With regard to Domenic's education, Protocol 1, Article 2 enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire education program of a child.<sup>23</sup> That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the "functions" assumed by the State. The verb "respect" means more than "acknowledge" or "take into account".<sup>24</sup> There should be no preference for one form of education over another so long as the child's educational needs are being met in accordance with the law.

In the instant case, the family was exercising its legal right to home educate under Swedish law. Despite this, the family's request to obtain textbooks from the local school

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<sup>22</sup> United Nations, *International Covenant on Economic, Social and Cultural Rights*, New York, 16 December 1966.

<sup>23</sup> *Kjeldsen, Busk Madsen and Pederson v. Denmark*, *op. cit.*, § 52. See also: *Case of Folgero and Others v. Norway*, App. No. 15472/02, judgment of 29 June 2007., § 84(c).

<sup>24</sup> *Case of Folgero and Others v. Norway*, *op. cit.*

authority was met with hostility and eventually the taking of Domenic into social care. Swedish Social Services were armed with no facts or evidence to take Domenic. Their actions evidence a subjective disagreement with the Johansson’s religious and philosophical beliefs and how that pertained to Domenic’s upbringing. This Court has held that “[i]t is in the discharge of a natural duty towards their children—parents being primarily responsible for the “education and teaching” of their children—that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.”<sup>25</sup> Second and equally pertinent, that “democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.”<sup>26</sup>

This case personifies an abuse of the dominant majority position. Social services intervened into the private family life of the Johansson’s because they disagreed with the family’s belief system, making value judgments which are not permissible under Convention law. Rather than remaining neutral in its functions, the State actively discriminated against the family for holding beliefs which differed from the majority viewpoint. These judgments, lacking any serious investigation or provable fact, were then used to remove Domenic and gravely injure the applicant family. These same judgments, which continue to exist without fact or serious evidence, persist in keeping the family separated.

The right to education and respect for parental authority over one’s children assumes some level of freedom. One aspect of this right is that State schools cannot exercise a monopoly in education. As Article 13 of the International Covenant on Economic, Social and Cultural

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<sup>25</sup> *Id.*, § 84(e).

<sup>26</sup> *Id.*, § 84(f).

Rights dictates [ICESCR]: “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>27</sup> Sweden signed the Convention on 29 September 1967 and it was ratified 6 December 1971 with no reservations concluded as to Article 13 on education.

The State cannot take such radical methods as separating families simply for the act of home education. Such a deprivation hinders the evolving capacities of the child and is to the detriment of the best interests of the child standard set in international law.<sup>28</sup> Furthermore, as the Council of Europe has recently stated: “History has proven that violations of academic freedom...have always resulted in intellectual relapse, and consequently in social and economic stagnation.”<sup>29</sup>

Article 2 of the First Protocol specifies that the state shall respect the right of parents to ensure education and teaching in conformity with their own philosophical convictions. The scope of this clause is broad and encompasses all methods of knowledge transmission and every type of educational structure including, moreover, those outside the school system.<sup>30</sup> The rights of parents to educate their children according to their own philosophical beliefs and desires as to what may be in their child’s best interest must be safeguarded in order to provide the possibility of pluralism in education, this being essential for the preservation of a democratic society. This

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<sup>27</sup> United Nations, *International Covenant on Economic, Social and Cultural Rights*, New York, 16 December 1966.

<sup>28</sup> See e.g.: United Nations, *Convention on the Rights of the Child*, , G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* 9.2.1990, Article 14.

<sup>29</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1762, *Academic Freedom and University Autonomy*, 30 June 2006, § 4.3.

<sup>30</sup> P.-M Dupuy and L. Boisson de Charzounes, “Article 2”, in L.E. Pettiti, E. Decaux and P.H. Imbert (eds.), *La Convention europeenne des Droites de l’Homme*, Economica, 2<sup>nd</sup> ed., 1999, p. 999.

holds all the more true in the instant matter where Sweden recognizes home education, Domenic meets the criteria to be home educated, and by decision of the County Court of Gotland on May 27<sup>th</sup>, it was adjudicated that Domenic could be home educated and move to India without hindrance.

The term “philosophical convictions” must be interpreted by the Convention as a whole, those which are not incompatible with human dignity being worthy of respect in a democratic society.<sup>31</sup> Philosophical beliefs include pedagogical beliefs: the parents’ beliefs as to the best way of educating their children. The previous chamber decision in the *Konrad* case<sup>32</sup> to dismiss the claim of home educators in Germany is not dispositive of this case. In *Konrad*, the court held that Germany was within its “margin of appreciation” in fining homeschoolers in the state of Baden –Württemberg. In Germany homeschooling is not permitted. However, a recent decision by the United States is illustrative that Germany is far outside the mainstream in harshly treating parents who seek to home educate their children. The Romeike family from the state of Baden-Württemberg was granted political asylum in the United States because the Immigration Judge stated that Germany was violating their “basic human rights” to “bring up their family.” He ruled that the family qualified for asylum on the grounds that they were being persecuted because of their religious convictions regarding homeschooling and because they were members of a particular social group of homeschoolers in Germany who were being persecuted in Germany. The ruling was issued by a Federal Immigration Court in Tennessee on January 26th, 2010.

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<sup>31</sup> ECHR, 25 February 1982, *Campbell and Cosans v. the United Kingdom*, Series A, No. 48, § 36: CDE, 1986, p. 230.

<sup>32</sup> ECHR, *Konrad and Others v. Germany*, application no. 35504/03, decision of 11.09.2006. *Konrad* is primarily distinguishable from the instant application because home education in Sweden is legal, whereas in Germany it is still not a recognized right.

Furthermore *Konrad* does not conform to the spirit of the Grand Chamber's recent decision in *Folgero and Others v. Norway*.<sup>33</sup> *Folgero* held that exemptions be allowed for students *from* religious education where parent's religious beliefs were offended. The natural progression of this holding is to allow an exemption *from* forms of education that are contrary to their parents' religious and philosophical convictions and in particular, as in the instant case, are not in the best interests of their children's educational development.

Moreover, the right to educate Domenic at home is a right recognized under Swedish law. However, the family was never afforded due process with respect to their decision to do so. As demonstrated, Swedish social services used this reason to separate Domenic from his parents. This action did not have a legitimate aim, was not "in accordance with the law" and not at all "necessary for a democratic society." Quite the contrary. This action must be censured as a violation of the Applicant's rights under the Convention.

Numerous international documents affirm parents as the primary and principal educators of their children. The Universal Declaration of Human Rights, Article 26 (3), states that, "Parents have a prior right to choose the kind of education that shall be given to their children."<sup>34</sup>

The United Nations Convention on the Rights of the Child clearly states that the rights of parents are not juxtaposed to the rights of children. Moreover, the parents, being the ones who love their children most, are those most called upon to decide on the education of their children. The pertinent excerpts of the Convention read thus:

**Article 5: States Parties shall respect the responsibilities, rights and duties of parents** or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, **to provide, in a manner consistent with the evolving capacities of the child, appropriate**

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<sup>33</sup> Application No. 15472/02, Judgment of 29 June 2007. Affirmed most recently in *Case of Hasan and Eylem Zengin v. Turkey*, Application No. 1448/04, Judgment of 9 October 2007.

<sup>34</sup> *Universal Declaration of Human Rights*, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

**direction and guidance** in the exercise by the child of the rights recognized in the present Convention. [Emphasis added]

Article 18: 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. **Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.** The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, **States Parties shall render appropriate assistance to parents and legal guardians** in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. [Emphasis added]<sup>35</sup>

Equally pertinent, the International Covenant on Civil and Political Rights (ICCPR), states in Article 18 (4) that “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>36</sup>

Further, the Convention against Discrimination in Education holds in Article 5(1)(b) that it is essential that States, “respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction.”<sup>37</sup>

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<sup>35</sup> United Nations, *Convention on the Rights of the Child*, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force 9.2.1990.

<sup>36</sup> United Nations, *International Covenant on Civil and Political Rights*, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967)

<sup>37</sup> General Conference of the United Nations Educational, Scientific, and Cultural Organization, *Convention Against Discrimination in Education* (1960), entered into force 22 May 1962.

In the instant matter, serious damage was done to the plain meaning of the Convention Against Discrimination in Education where Swedish law recognizes home education as legitimate, but the State refused to provide genuine due process, or the requested textbooks for educating Domenic, and then removed him from his parent's custody.

**(v) Article 9 + Protocol 1, Article 2**

Freedom of religion when taken in conjunction with Protocol 1, Article 2 requires that the state respect the religious and philosophical convictions of the Johansson's in raising their son, Domenic. The European Court of Human Rights has elevated the right to freedom of thought, conscience and religion as one of the cornerstones of a democratic society.<sup>38</sup> The Court has held that religious freedom is one of the vital elements that make up the identity of believers and their conception of life.<sup>39</sup> Article 9 has taken the position of a substantive right under the European Convention.<sup>40</sup>

The freedom to choose one's faith and live it out is an inviolable freedom protected under the European Convention. Discriminatory treatment of a religion for historic, ethnic or content-based reasons, which has the effect of diminishing this freedom of choice, is prohibited. State interference with the practice of those religious and philosophical convictions where necessity is lacking, as is the case in the instant matter, violates Article 9 of the Convention.

Respect for parental rights to raise and educate their children according to their own religious and philosophical convictions must also be read together with the protections recognized by Article 9 of the Convention. As relates to the Johansson's, these protections

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<sup>38</sup> ECHR, 25 May 1993, *Kokkinakis v. Greece*, Series A No. 260-A, § 31: AFDI, 1994, p. 658.

<sup>39</sup> ECHR, 20 September 1994, *Otto-Preminger-Institut v. Austria*, Series A, No. 295-A: JDI, 1995, p. 772.

<sup>40</sup> *Kokkinakis op.cit.*; ECHR, 23 June 1993, *Hoffmann v. Austria*, Series A, No. 255-C: JDI, 1994, p. 788; ECHR, 20 September 1994, *Otto-Preminger-Institut v. Austria*, Series A, No. 295-A: JDI, 1995, p. 772; ECHR, 26 September 1996, *Manoussakis and Others v. Greece, op. cit.*, p. 749.

extend to the right to educate their child at home in accordance with Swedish law and the right to make decisions regarding their son's health and well being.

#### **IV. Statement Relative to Article 35 § 1 of the Convention**

*(See § 19(d) of the Notes. If necessary give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)*

16. *Final decision (date, court or authority and nature of the decision)*

- 27 January 2010, Regeringsrätten (Supreme Administrative Court), Case No. 45-10, the Supreme Administrative Court denied the Applicants' motion for appeal.

17. *Other decisions (list in chronological order, giving date, court or authority and nature of decisions for each of them)*

- 13 August 2009, Länsrätten (County Administrative Court), Case No. 531-09, the court upheld the decision of Swedish social services to continue the separation of the family.
- 17 December 2009, Second Kammarrätt (Administrative Court of Appeal), Department 2, Case No. 6186-09, upheld the decision of the lower court.

18. *Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.*

All domestic remedies were exhausted prior to the filing of this application.

#### **V. Statement of the Object of the Application**

*(See § 19(e) of the Notes)*

19. Applicants seek immediate reunification of their family based on Article 8 of the Convention. They further seek the return of all of Domenic Johansson's identifying documents without which he is unable to realize his rights as an Indian citizen or to travel to and live in India where he enjoys citizenship rights. Applicants seek pecuniary damages for costs associated with their abandonment of their plans to move to India as a result of Domenic's taking; non-pecuniary damages for emotional distress and loss of enjoyment of family and for gross

negligence in any pre- and post- investigative process in the handling of Domenic's case; and costs.

## **VI. Statement Concerning Other International Proceedings**

*(See §19(f) of the Notes)*

20. *Have you submitted the above complaints to any other procedure of international investigation or settlement? If yes, give full details.*

The above applicants have not been submitted to any other procedure of international investigation or settlement.

## **VII. List of Documents**

**(NO ORIGINAL DOCUMENTS,  
ONLY PHOTOCOPIES,  
DO NOT STAPLE, TAPE OR BIND DOCUMENTS)**

*(See §19(g) of the Notes. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)*

21. (a) Judgment of 27 January 2010, Regeringsrätten (Supreme Administrative Court), Case No. 45-10.

(b) Judgment of 13 August 2009, Länsrätten (County Administrative Court), Case No. 531-09.

(c) Judgment of 17 December 2009, Second Kammarrätt (Administrative Court of Appeal), Department 2, Case No. 6186-09.

(d) Witness affidavits affirming the competency of Annie and Christer Johansson as parents.

### VIII. Declaration and Signature

(See §19(h) of the Notes)

*I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.*

Place ... Bratislava, Slovak Republic

Date ... June 25, 2010

*Rom Urdin*

(Signature of the applicant or of the representative)