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Legal aspects of transcription of personal names
in the Latvian language

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SUMMARY

Personal names perform various functions; they are means of identification of a person among other individuals, as well in personal documents issued to the individual. The name a person acquires immediately after birth becomes a very important part of their life, thus becoming an essential part of their rights. Nevertheless, personal names are language units as well, they are to be included in various documents, such as diplomas and certificates; therefore, they are bound to occur in sentences, either written or spoken, thus becoming part of the language they are used in. Every language has its peculiarities that influence personal names, and the Latvian language is no exception. It is a language with an interesting history, many changes in the governing cultures, and that has resulted in certain changes in name-giving customs, as well as in changes in transposition of foreign personal names in the Latvian language. Therefore, precise regulations have been developed in order to ensure the correct reproduction of foreign personal names in the Latvian language, as well as to ensure the use of correctly written names among Latvian nationals.

Nevertheless, as personal names are part of an individual's rights, including the right to private life or privacy, such reproduction of names may result in interference with those rights. Therefore, the aim of this paper is to examine the legal and linguistic aspects of transcription of personal names in the Latvian language, so as to determine if the rights of an individual may come into conflict with State language policy. For this purpose relevant domestic, European and international legal acts have been examined, revealing the role of personal names in individual rights, and stating the relevant provisions of such legal acts. After examining the laws, their application in court decisions was investigated.

The fact that several applicants have turned to the courts shows that dissatisfaction with the current situation with regard to transcription of personal names in the Latvian language is present. Furthermore, after examining the relevant court proceedings, as well as decisions of the European Court of Human Rights and the Human Rights Committee, the inevitable conclusion is that the standards of the European Court of Human Rights and the Human Rights Committee differ on this subject. Even though the European Convention on Human Rights and the International Covenant on Civil and Political Rights both provide for respect for private life (privacy), with the difference of the Covenant not providing the Member States with a margin of appreciation, the difference of opinion indicates that views on interference by the State being proportionate to particular circumstances differ.

Having examined the court proceedings and the decisions of the European Court of Human Rights and the Human Rights Committee, their influence on the current situation was analysed. Seemingly, if a matter has once been settled, it must establish a pattern to be followed in succeeding cases on the same issue. Nevertheless, every judgment refers to only one particular case, the case the judgment has been delivered in. So after examining the influence or its absence of the

judgments and decisions on the current situation of transcription of personal names in the Latvian language, conclusions on this subject matter were established, providing suggestions as to achieving the best possible compromise between the rights of the individual and the preservation of the Language.

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INTRODUCTION

The issue of transcription and transliteration of foreign personal names in the Latvian language and amendments to existing Latvian names in order for them to correspond to the rules and norms of Latvian grammar and orthography is a sensitive one that can be viewed from different perspectives. Generally, when a name has to be included in the Latvian language system, two important aspects are to be taken into account: the interests of the individual and the interests of the State, and occasionally a conflict of interests is bound to occur, as any kind of interference with an individual's name may not be perceived as necessary by that individual, contrary to the State, which cannot emphasize enough the importance of unified language standards.

The fact remains that the Latvian language, according to Latvian language experts, remains quite fragile and any derogation from the existing rules and norms may result in distortion of the existing system, imposing a threat to the existence of the language as such. The Latvian language has undergone many difficulties throughout the centuries, caused by various historical, linguistic and social factors. Furthermore, language is a living organism, constantly developing and changing, as no language can be perceived as an isolated item and is bound to interact with other languages at some point and on some level, thus resulting in an occasional broadening through acquisition of language items from foreign languages it has been in contact with. The Latvian language is no exception, and such changes and acquisitions have appeared in the sphere of personal names as well, these being part of the language.

Personal names in the Latvian language have experienced highly significant changes, caused by different factors, mainly by the tendencies of a particular time as a result of changes in the governing culture. For example, at some point German culture was the authoritative culture, resulting in many Latvians acquiring German surnames. The same goes for Russian culture, and so on. Furthermore, the issue of inclusion of foreign personal names in the Latvian language has by all means been topical since the first signs of interaction with foreign names, and solutions found by people were amazingly divergent, starting from unchanged transposition from the source language, through adding declinable endings to the unchanged forms of the names, to reproduction of such names in complete harmony with the standards of the Latvian language.

At the present moment the issue has seemingly been settled, as there is a sufficient amount of legal regulations on reproduction of foreign personal names, as well as various guidelines for transcription and transliteration of personal names from various languages. Certainly, these regulations apply not only to foreign personal names, but also to Latvian names, including those that have been present in the Latvian language for many decades while not corresponding to the current norms and rules of Latvian grammar. Thus, this issue concerns not only foreigners who have gained a strong connection with Latvia as a result of, for example, marrying a Latvian national, but also Latvian nationals whose family name contradicts the current regulations to some extent, as everybody is equal before the

law, and rules apply to everybody regardless of their origin, the most salient factor being acquisition of personal documents in the Republic of Latvia.

Nevertheless, as Latvia is now a part of several international and European organizations, it has undertaken obligations it has to follow. As the human rights issue is becoming increasingly appreciable, the modern tendency is to pay these rights the respect they deserve. There are no doubts that a personal name is part of one's rights, the rights to private and family life, or privacy, to be precise; therefore, Latvia is obliged to consider the aspect of human rights when transcribing personal names, as careful evaluation is needed as to when the right to one's unchanged name is slightly inferior to the rights of Latvian speaking nationals to use, read and hear the Latvian language in its correct form, without any derogations, even the slightest. Likewise, the threat to the Latvian language is a relative question, as not every indentation form of existing norms constitutes a threat, and careful evaluation of every case in particular is needed before announcing the general outcome.

The fact that various cases on the issue of transcription of personal names have ended up before the courts leads to the inevitable conclusion that the best possible compromise between the interests of the individual and the interests of the State has not yet been achieved. This is even further stipulated by the fact that there is still no unanimous opinion on this matter, resulting in continuous discussion between linguists, human rights activists and various other experts. Of course, a situation where everybody is satisfied sounds like an unachievable utopia. Nevertheless, the search for possible solutions must continue, as stagnation is not acceptable, nor it would be a sign of a democratic society, where the State is interested in the well-being of its nationals and overall development of the human rights topic, at the same time preserving the value of the Latvian language.

Thus, the research question is: what is the best possible compromise between preservation of the Latvian language and protection of human rights in relation to personal names and surnames that are not in accordance with the rules and norms of the Latvian language?

In order to find the answer to the research question using descriptive and analytical methods, the following objectives were established:

- 1) To provide an overview of the linguistic aspect of the issue, giving an insight into the historical reasons behind the necessity to transcribe personal names. This overview is reflected in Chapter 1.
- 2) To analyse the relevant domestic laws providing for the legitimacy of the transcription of personal names in the Latvian language. This analysis is presented in Chapter 2.1.
- 3) To analyse the international obligations Latvia has undertaken with regard to personal names being part of an individual's human rights. This analysis is presented in Chapter 2.2. Chapter 2.2.1 provides an overview of the relevant laws of the European Union, Chapter 2.2.2 reflects the relevant Articles of the European Convention on Human Rights, and Chapter 2.2.3 depicts the relevant standards set by the United Nations.

- 4) To analyse whether the transcription of personal names in the Latvian language constitutes an interference with an individual's human rights, as well as the criteria for the possibility of such interference being justifiable. This analysis is presented in Chapter 3.
- 5) To examine court proceedings on various levels on the issue of transcription of personal names in the Latvian language, seeing how the principles established in the previous analysis of the relevant laws were applied by the courts in delivering their judgments and decisions. Judgments on the domestic level are analysed in Chapters 3.1, 3.1.1 and 3.1.2. Decisions of the European Court of Human Rights are analysed in Chapters 3.2., 3.2.1 and 3.2.2. Decisions of the United Nations Human Rights Committee are analysed in Chapters 3.3 and 3.3.1. The differences in standards applied on the international level are depicted in Chapter 3.4.
- 6) To examine how court decisions have influenced the current situation with regard to transcription of personal names in the Latvian language and the following cases on the same issue. This analysis is presented in Chapters 4, 4.1 and 4.2.
- 7) To provide conclusions, based on the analysis conducted, thus answering the research question posed and proposing an improved compromise between preservation of the Latvian language and protection of human rights in relation to personal names and surnames that are not in accordance with the rules and norms the Latvian language.

1. TRANSCRIPTION OF FOREIGN PERSONAL NAMES, HISTORY AND REASONS

“Proper names are poetry in the raw. Like all poetry they are untranslatable.”
/ W.H. Auden/

The issue of personal names is a sensitive one, as a name often represents a person's relation to his or her background; sometimes it is even a sort of heirloom passed from one generation to another within one family, and often by hearing the name it is possible to determine the origin of its bearer. Moreover, as Marta Balode¹ states, “a personal name has various functions; it symbolizes the uniqueness of an individual, as well as represents its social relations”². As a person is a social being, personal names often show that a person belongs to a particular community; sometimes even their social status may be evident merely from their name. Names differ across cultures, and even within one culture personal names have undergone serious changes directly related to changes in the culture *per se*. The Latvian language is no exception, as Latvia has experienced some enormous cultural changes throughout the centuries, caused by various reasons, mainly by getting caught under the yoke of other dominant countries. Therefore, changes in personal names go hand in hand with changes in the dominant culture.

Accordingly, when trying to understand the processes underlying the transcription of foreign personal names in the Latvian language, as well as amendments to existing personal names so that they would be in accordance with the rules and norms of Latvian grammar, it is essential to understand the underlying historical reasons. Clearly, the issue under discussion is governed by domestic legal acts, but the fact that several cases regarding this issue have ended up in the courts shows that there is still no unanimity in determining what is right, even though scholars for many decades have tried to put this issue in strict frames. Many of these scholars have succeeded in aiding the creation of certain rules and guidelines for transcription and transliteration of personal names in the Latvian language, and they cannot go unnoticed. Moreover, the peculiarities of Latvian literary language and linguistic aspects of the actions under discussion have to be taken into account when analysing the necessity (or the contrary- redundancy) of reproduction of foreign names in the Latvian language by transliteration or transcription.

¹ M. Balode has a master's degree in humanities and is a project coordinator at the Latvian Language Agency.

² “Personvārdam piemīt vairākas funkcijas: tas gan simbolizē indivīda unikalitāti, gan norāda tā sociālās saites”. M. Balode, „Sieviešu pēclaulību uzvārda izvēle jauktajās latviešu-somu ģimenēs: metodoloģiskais un socioonomastiskais aspekts.” *Apvienotais Pasaules latviešu zinātnieku III kongress un Letonikas IV kongress „Zinātne, sabiedrība un nacionālā identitāte”*. Valodniecības raksti. Rīga: LU Latviešu valodas institūts, 2012, at p.80.

1.1. Transliteration, transcription or Latvianization

When a personal name or surname is being reproduced in the Latvian language, it is not always clear what exactly is being done to it. The changes are quite obvious, and if these amendments are made in order for the name or surname to correspond to the rules of Latvian grammar and orthography, the word “Latvianization” naturally comes to mind. This word is being used quite broadly now, and the mass media popularize its use by constantly referring to it when discussing cases involving reproduction of personal names and surnames, especially foreign ones, in the Latvian language, e.g. article “UN Human Rights Committee: Latvianization of surnames in documents - in contradiction with rights to privacy”³ depicting the *Raihman* case (discussed in detail in chapter 3.3.1). In recent years this word has gained quite a strong foothold in this sphere, and usually it comes along with quite negative connotations. Thus, when we hear or read the word “Latvianization” in the mass media, it is almost completely certain that it will be followed by a description of court proceedings or at least by a depiction of dissatisfaction of foreigners upon receiving their documents that have been issued by Latvian institutions containing their names in pure Latvian form. However, the question is whether the changes that are being made really can be called *Latvianization*.

An explanation of *Latvianization* could be translation of personal names and surnames into the Latvian language. As Māris Baltiņš⁴ states, there is a huge difference between *Latvianization* and reproduction of names. In one of his interviews⁵ professor Baltiņš explains that *Latvianization* means that the essence of the personal name is changed, for example, Ivans Volkovs becomes Jānis Vilks⁶. Of course, it is not forbidden for a person to demand such changes if he or she desires it. While reproducing such names in the Latvian language, they are written in accordance with their pronunciation in the original language and the amendments are made so that they would be written in accordance with the rules of Latvian grammar and orthography. For example, Jennifer Aniston becomes Dženifera Anistone.

The abovementioned occurrence is actually a transcription - foreign names are not translated, but are merely adapted to Latvian language norms and rules. Then the question remains what the difference between transliteration and transcription is. The aforementioned example of Jennifer Aniston is transcription, because both the Latvian language and the English language use the Latin alphabet. In contrast, transliteration is somewhat different; it means “represent[ing] (letters or words) in the corresponding characters of another alphabet”⁷. Thus, if we take the example of

³ Online article „ANO Cilvēktiesību komiteja: uzvārdu latviskošana dokumentos- pretrunā ar tiesībām uz privātumu”, available from <http://www.delfi.lv/news/national/politics/ano-cilvektiesibu-komiteja-uzvardu-latviskosana-dokumentos-pretruna-ar-tiesibam-uz-privatumu.d?id=35494385>. Last visited in January 2014.

⁴ Director of the State Language Centre, professor at the Riga Graduate School of Law.

⁵ L. Trautmane, „Kā ir likumīgi pareizi - Anna Wordsworth vai Anna Vērdsvērta?”, 2012, available at <http://www.lvportals.lv/print.php?id=246955>. Last visited on 5 April 2013.

⁶ Russian „волк”, Latvian „vilks”, English “wolf”.

⁷ The free online dictionary, available at <http://www.thefreedictionary.com/transliteration>. Last visited on 5 April 2013.

Jānis Vilks, mentioned above, and its original form Ivans Volkovs, and if we assume that Ivans is a citizen of a Russian speaking country, then the original form of his name and surname in the Russian language would be “ИВАН ВОЛКОВ”. What happens here is that two different alphabets are involved, and the personal name has to be transferred from one alphabet into another; thus, transliteration is required.

So it is clear that *Latvianization* is translation, whereas transcription and transliteration are merely reproduction of personal names in the Latvian language in accordance with its norms and rules within the frame of one or two alphabets, accordingly. However, this seemingly clear issue remains quite obscure for many people, so the term *Latvianization* has become the commonly used representation of amendments that are made to personal names and surnames in order that they would correspond to the rules of Latvian grammar. Therefore, whenever a case that involves transcription or transliteration of personal names is displayed in the mass media, the term *Latvianization* is used quite unnecessarily and inappropriately. Moreover, as the mass media have incredibly huge power over people at large, this incorrect use of the term has found its way into society, so for the purpose of this paper, whenever a reference is made to an article or a judgment where the term *Latvianization* is used, it must be borne in mind that the true intent of this was to describe transliteration and/or transcription.

1.2. Peculiarities of Latvian literary language

Every language has its distinctive features, characteristic only of that language in particular. Language as such consists of many sub-languages, e.g. medical language, legal language, mathematical language, and so on, and each of these sub-languages possesses some qualities that are particular only to it and to no other language. It is quite clear that the language spoken among people on the streets, in the shops and so on greatly differs from the one that is present in books, articles, personal documents and other sources, and the language used may even vary depending on the occasion. This distinction is obvious even in the most mundane occurrences, for example, the language pupils use amongst themselves in schools differs from the one they use while communicating with their teachers or visiting officials. However, the interest lies in the literary language, its peculiarities and grammatical rules and norms.

For the purpose of understanding the peculiarities of Latvian literary language, the aspect of written language is very important, as written materials are the only reliable source of information about the roots and the development of the language. As has been pointed out by Anna Bergmane and Aina Blinkena in their research⁸, “since the 16th century when the first published books appeared and up until nowadays, the Latvian language has faced constant changes in lexis, phonetics and grammatical structures, as well as in pronunciation and writing”⁹. Furthermore,

⁸ A. Bergmane, A. Blinkena, *Latviešu rakstības attīstība: Latviešu literārās valodas vēstures pētījumi*, Rīga, Zinātne, 1986, at p.3.

⁹ „Kopš 16. gs., kad parādās pirmās iespiestās grāmatas, līdz pat mūsu dienām latviešu valodā notiek pastāvīgas pārmaiņas gan leksikā, gan fonētikā, gan gramatiskajā struktūrā, gan izrunā un rakstībā.” *Ibid.*

it is said that “these changes depend on the inner development of the language, as well as society’s social and historical conditions”¹⁰. This is characteristic of any language, as the language as such ought to be seen as a living organism, constantly developing under the influence of progress and due to exposure to other languages and cultures.

The Latvian language is a grammatically complicated one, and the grammar rules are precisely defined, so as to ensure the correct use of the language under any circumstances, be it in relation to personal names or any other sphere of language. As Juris Baldunčiks¹¹ states in his article on reproduction of foreign proper names in the Latvian language¹², the two most salient features of the Latvian language that serve as reasons for reproduction of foreign personal names in the Latvian language are, first, the Latvian language is a phonographemic language, and second, it is an inflected language. The first feature means that the words are written the way they are pronounced (with some minor exceptions), and the second feature means that “the change in the form of a word”¹³ expresses the major part of syntactic functions.

These features clearly differentiate the Latvian language from many other languages, such as English, French, Spanish, and others. Basically it means that while in many other languages pronunciation greatly differs from the spelling¹⁴, in the Latvian language it is quite different - words are read the way they are written. Additionally, the syntactic functions in many other languages are expressed by the use of prepositions and by strict rules of the word order in a sentence, whereas in the Latvian language the same functions are expressed by declension, inflection of adjectives and conjugation of verbs. Moreover, as the Latvian language is an inflected language, it requires specific word endings even in the nominative case, which differentiates it from other languages to an even greater degree. This feature in particular is of great relevance when the time comes to transcribe foreign personal names into the Latvian language, as these endings (and most importantly, adding these endings in cases when there originally have not been any) ensure the correct reproduction of foreign personal names and their proper inclusion in the Latvian language.

Furthermore, the declension of names ensures the correct transfer of meaning in a sentence. Even though ordinarily the order of the words in the sentence in the Latvian language is the same as in the English language, i.e., first comes the subject, then the predicate, and then the object, in the Latvian language such word order is

¹⁰ „Šīs pārmaiņas ir atkarīgas gan no valodas iekšējās attīstības likumībām, gan no sabiedrības sociālajiem un vēsturiskajiem apstākļiem.” *Ibid.*

¹¹ Dr. Phil., linguist, professor at the University of Latvia and at the Ventspils University College.

¹² J. Baldunčiks, „Citvalodu īpašvārdu atveide latviešu valodā (vēsturisks pārskats)”, available at <http://www.letonika.lv/article.aspx?id=personvardi>. Last visited on 14 April 2013.

¹³ "inflection", *Encyclopædia Britannica. Encyclopædia Britannica Online Academic Edition*. Encyclopædia Britannica Inc., 2013, available from <http://www.britannica.com/EBchecked/topic/287731/inflection>. Last visited on 14 April 2013.

¹⁴ E.g. the humorous example created by George Bernard Shaw, where he explained that “ghoti” is pronounced “fish”, if pronunciation of “gh” is like in the word “rough”, “o” is pronounced like in “women”, and “ti” is pronounced like in “nation”.

not mandatory (although highly recommended as the conventional one in the Latvian literary language), in contrast to the English language. Thus the order of the words in a sentence in the Latvian language may vary due to the intended emphasis, meaning that the predicate, for example, can be written or spoken as the first word in the sentence if the intention of the writer or the speaker is to emphasize the action in particular. The same can be said about beginning the sentence with the object - if it needs to be stressed, it can be the first word in the sentence. Again, such linguistic diversity is possible only due to the fact that the Latvian language is an inflected language, and by the correct use of declension no misunderstandings can occur as to which word is the subject and which is the object.

Therefore, Latvian literary language is a highly complex language that requires extraordinary precision and following the rules and norms of Latvian grammar. Moreover, the distinctive features of the Latvian language differentiate it from many other languages, thus requiring a balanced and highly explicit set of rules just to transfer words, including personal names, from other languages. Flexible word order in the sentence and the fact that even in the nominative case the Latvian language determines that particular endings should be present ensures that sensible and understandable syntax is preserved. However, where there are rules, there are exceptions as well. For example, some words are indeclinable (e.g. Raivo), which complicates an already complex language even more. The curious thing to explore is whether there is room for some more exceptions involving transcription of foreign personal names in the Latvian language, an exception which is highly desired by those who feel that they have fallen victim to, in their opinion, *Latvianization*, or in other words, transcription or transliteration.

1.3. Historical development of Latvian personal names and reasons behind transcription of foreign personal names

In order to see the reasons that stand behind the transcription of foreign personal names and the amendments that many personal names that have existed throughout the centuries in the territory of Latvia have undergone for the mere purpose of achieving their correspondence to the standards of the Latvian language, it is crucial to examine the history of personal names in the Latvian language in the context of the changes that came about as a result of the diversity of governing cultures. The influence of such diversity is manifested in the fact that the origins of personal names in Latvia differ. For example, there are names of German origin, names of Russian origin, and so on. The cause for such changes in the origin of personal names is the change of the governing culture. And upon considering the history and reasons behind the reproduction of foreign personal names in the Latvian language, it is quite sensible to mention that the most notable contribution to this issue was made by such scholars as Ernests Blese, Jānis Endzelīns, Juris Alunāns, among others. However, the language has been studied for many decades from various aspects and by various scholars.

Moreover, the language has been studied not only by Latvians, but by foreigners as well. Alvis Augstkalns mentions in one of his works¹⁵ that the language has been studied primarily by people of German origin - priests and lords. For example, he states that "Mancelis (Georg Manzel, Georgius Mancelius 1593-1654) was the first most notable person in the history of Latvian language studies"¹⁶. So, as the language was researched by Latvians and non-Latvians, and early research appeared mostly in the German language, it is not surprising that, first, Latvian writing greatly resembled some specifics of German writing and, second, that Latvian orthography was slightly chaotic, as there was no unanimous opinion about correct and acceptable standards of writing. Nevertheless, without such research the language would have fallen into stagnation without the slightest prospect of development that would finally lead to the modern Latvian language.

Changes in writing personal names stem directly from changes in writing as such, as improvements in the orthography of the Latvian language were, of course, applied to all words, including personal names. As stated by Anna Bergmane and Aina Blinkena¹⁷ Latvian orthography has undergone some serious changes from the very beginning of Latvian writing to the middle of the 20th century, when the new orthography was gradually introduced over the old orthography, as the most progressive part of society was in favour of it¹⁸. This was possible due to the enormous effort of various linguists, scholars and language activists who fought for a way to improve the language in a manner that would be acceptable not only for the experts, but also for common users of the language. Even though the path was not a smooth one and there was not always a unanimous opinion on what the result should look like, by the middle of the 20th century the Latvian language obtained the shape that we see nowadays. Some examples of the differences between the old and the new orthography may include the abandonment of "h" as a means to make vowels long, using lengthening marks instead, or substitution of the diphthong "ee" with "ie" that represents the pronunciation more correctly¹⁹.

After providing a slight insight into the historical development of the Latvian language, development of Latvian personal names and reasons for the transcription of personal names of foreign origin must be taken into account. The system of Latvian names and surnames is explicitly revealed in work by Pauls Balodis²⁰. He quite frequently uses the term *Latvianization*, and emphasizes that "[l]atvianization

¹⁵ A. Augstkalns, *Mūsu valoda, viņas vēsture un pētītāji*, Rīga, Valtera un Rapas akc. sab. izdevums, 1934.

¹⁶ Mancelis (Georg Manzel, Georgius Mancelius 1593-1654) pats tā tad ir arī latviešu valodas pētīšanas vēsturē pirmā ievērojamākā persona." *Ibid.*, at p.14.

¹⁷ See *Supra* note 8.

¹⁸ „Sabiedrības progresīvākajā daļā arvien vairāk nobriest doma, ka vecā, no vācu rakstības pārņemtā un latviešu valodas fonoloģiskajai dabai neatbilstošā grafētika ar neracionāli izveidotajiem fonēmu apzīmējumiem (tā sauktā vecā ortogrāfija) aizstājama ar jaunu- latviešu valodas fonēmu apzīmēšanai vairāk piemērotu, racionālu grafētiku, lai panāktu iespējami skaidras attieksmes starp rakstījumu un lasījumu." *Ibid.*, at p. 23.

¹⁹ "Saliktā patskaņa "ee" vietā jāraksta "ie" un patskaņu garums jāapzīmē ar horizontālu svītru visiem gari izrunājamiem patskaņiem." *Ibid.*, at p. 30.

²⁰ P. Balodis, *Theoretical model of the etymological semantics of Latvian personal names and its realization*, Rīga, 2008.

of the personal names system was initiated by A. Kronvaldis and Auseklis in the middle of the 19th century."²¹ This was also the time when some significant innovation in Latvian anthroponomy²² appeared. Furthermore, the origin of the concept of surnames is quite interesting: "[u]ntil the assignment of surnames persons were identified by their name, patronymic, nickname, family status, profession, homestead name."²³ Therefore, as most of the criteria for naming a person were variable for several reasons, e.g., change of place of residence or occupation, the necessity for surnames developed.

As mentioned before, the names and surnames of Latvians vary considerably. For example, some of them are of Russian origin, and some of German origin. Moreover, for a long period of time German names were used for surnames, i.e., if a surname was to be determined according to the profession, it could be written in accordance with the German language. For example, if a person worked as a fisherman, his occupation could become his surname. However, instead of writing "fisher" in Latvian (*zvejnieks*), it could be written in German (*fischer*). Nevertheless, Pauls Balodis writes that in "the second part of the 19th century when the National awakening started in Latvia, Neo-Latvians recommended to Latvianize the name in surnames."²⁴ Thus, Fischer (Fišers) could once again become Zvejnieks. Furthermore, as some new personal names entered the Latvian language (for example, with Christianity), they suffered from changes in their original form due to the fact that languages differed. Klāvs Siliņš²⁵ writes that "each nation adapted the names that were forced upon them in accordance with their own language and spirit"²⁶. As a result, various forms of the same name appeared.

Moreover, the 19th century is an important period in the sense of reproduction of foreign personal names (not Latvian personal names of foreign origin), though their reproduction in the Latvian language did not have a common standard and no guidelines for doing so were developed. Upon encountering a foreign personal name and facing the necessity to include it in a Latvian text, people came up with different solutions. Juris Baldunčiks²⁷ mentions several of them. First the original form of names and surnames was transferred without any signs of reproduction²⁸. Second, additional information about foreign names and surnames was present in brackets, e.g., if the reproduced form came first, then it was followed by the original form in brackets and *vice versa*²⁹. Third, it was quite possible to encounter the original

²¹ *Ibid.*, at p.73.

²² A branch of onomastics that studies personal names. The free online dictionary, available from <http://www.thefreedictionary.com/anthroponymy>. Last visited on 20 April 2013.

²³ See *Supra* note 20, at p.74.

²⁴ *Ibid.*

²⁵ K. Siliņš, *Latviešu personvārdu vārdnīca*, Rīga, Zinātne, 1990, at p.14.

²⁶ „Katra tauta tai uzspiestos vārdus pielāgoja savas tautas valodai un garam”. *Ibid.*

²⁷ See *Supra* note 12.

²⁸ „Pirmkārt, veclatviešu tekstos sastopami neatveidoti vārdi un uzvārdi”. *Ibid.*

²⁹ „Otrkārt, citvalodu personvārdus pasniedza ar papildinformāciju iekavās. Ja pamatvariants bija atveidojums, tad iekavās bija dota oriģinālforma, bet, ja pamatvariants bija oriģinālforma, tad sniegta vairāk vai mazāk precīza izruna.” *Ibid.*

form of the personal name with Latvian endings added to it³⁰. Fourth, names might be translated³¹ (or *Latvianized*), e.g. John became Jānis, George became Juris. Obviously, this issue was craving for some sort of standards and structure; as such diversity of solutions only added another element of chaos to an already exceptionally chaotic system (or lack of system, to be precise).

The idea of *Latvianization* of personal names of foreign origin was further supported by the adoption of the Law on Change of Name³² in 1939 by Kārlis Ulmanis, who was the president of Latvia at that time. This law stipulated that “Latvians who are citizens of the Republic of Latvia must choose only a Latvian surname and that non-Latvians were not allowed to choose Latvian surnames”³³. Furthermore, it set out several requirements that would secure the possibility to change the surname, e.g., if the existing surname was of an offensive character, it did not correspond to the person’s nationality, it was too popular, and so on.³⁴ The idea behind this law was to give Latvians an opportunity to manifest their relation to Latvia by choosing to bear a Latvian surname, as it was the time of awakening when Latvians craved to show their national identity. However, not surprisingly many chose to keep their surnames of German origin that are still present nowadays.

So, after a long path from having no surnames, through having the name of an occupation in German as a surname, to having a possibility to *Latvianize* such surname afterwards, Latvians have acquired their surnames in forms that are mostly still present nowadays with some minor exceptions. And after an incredibly complicated and chaotic period of adapting the new orthography, the writing in the Latvian language has gained a form that more or less remains the same, even though, as language is a living organism, it is still constantly developing and changing, and it is quite possible that in several decades’ time some noticeable changes will be adopted as a norm of Latvian literary language; these changes, of course, will affect personal names as they are an essential part of the language.

Furthermore, foreign personal names have been present in the Latvian language for many centuries; however, the way of transposing them has experienced adjustments that years ago would not have seemed possible. From transposing foreign personal names in their original form into the Latvian language to their complete reproduction in the Latvian language in accordance with the norms and rules of Latvian grammar and orthography, foreign personal names have undergone severe changes for the purpose of remaining in the existing Latvian language. However, as for a long period of time there was no unanimous opinion as to how foreign personal names should look when reproduced in the Latvian language (and as a matter of fact, present day experts still express different opinions on this subject, as revealed in Chapter 2.1), it is possible that the final form still has not been

³⁰ „Treškārt, citvalodu personvārdi tika lietoti hibrīdformā (oriģinālforma ar latviešu galotni)”. *Ibid.*

³¹ „Ceturtkārt, paretam notika svešo personvārdu „it kā pārtulkošana””. *Ibid.*

³² Likums par uzvārda maiņu (1939), available from <http://www.roots-saknes.lv/Names/NameChanges/LawNameChange1939.htm>. Last visited on 20 April 2013.

³³ „Latviešu tautības pilsoņiem jāizvēlas vienīgi latviski uzvārdi. Nelatvieši nevar izvēlēties latviskus uzvārdus.” *Ibid.* Chapter 2.

³⁴ *Ibid.* Chapter 1.

achieved. It is clear that personal names as such mark a language sphere that stands out from the whole language concept, as they affect even those people whose sole connection with the Latvian language was acquired by, for example, marrying a Latvian national. So this sphere could be the one that requires slightly more flexible rules than the other language spheres.

1.4. Linguistic aspects of transcription of foreign personal names in the Latvian language

After a long period of inconsistency in transcription and transliteration of foreign names in the Latvian language, as well as changes in existing Latvian names and surnames that occurred due to changes in the governing culture, a result of common standards for such actions was achieved. The first principles of transcription of foreign personal names in Latvian were established by Juris Alunāns, but Jānis Endzelīns was the one to establish the most important principle in this sphere - reproduction of foreign personal names in accordance with the original pronunciation. As Inta Freimane³⁵ states in her work³⁶, upon establishing this principle, Jānis Endzelīns foresaw the importance of tradition and the possibility of a compromise. For example, "an orthographic compromise if there is no possibility of reproducing the original pronunciation due to lack of appropriate symbols in the Latvian language, as a result of which the existing symbols were used instead"³⁷, or in cases "when reproduction would unrecognizably change the look of the name"³⁸. However, Inta Freimane points out that "when reproducing personal names according to their pronunciation, etymology should be taken into consideration as well"³⁹.

As this issue was highly important, yet complex, and many linguists had different opinions on it, several guidelines were published on how to reproduce foreign proper nouns, including personal names. However, as Inta Freimane writes, the authors of these guidelines had to face various difficulties and stumbled upon three main problems⁴⁰. First, the occasional lack of respective sounds in the Latvian language, which led to certain difficulties in reproducing the exact pronunciation of the original names. Second, the tradition in the Latvian language relating to pronunciation, meaning that not always do Latvians use the correct pronunciation and it is hard or almost impossible to change such habits. Sometimes such occurrence

³⁵ Dr.hab.Phil, one of the most notable Latvian linguists.

³⁶ I. Freimane, *Valodas kultūra teorētiskā skatījumā*, Rīga, Zvaigzne, 1993.

³⁷ „Dažos gadījumos viņš ir atzinis ortogrāfisku kompromisu: ja oriģinālvalodas skaņas nav iespējams precīzi atdarināt, viņš ir pieļāvis jau pazīstamas, pēc tradīcijas lietotas rakstu un izrunas formas.” *Ibid.*, at p. 424-425.

³⁸ „Ja oriģinālvalodas precīza atdarināšana pārāk attālinātos no oriģinālvalodas rakstības un stipri tiktu pārveidots vārda ārējais attēls.” *Ibid.*, at p. 425.

³⁹ „Citvalodu īpašvārdu skaņas ir jāatveido saskaņā ar oriģinālvalodas izrunu, tomēr respektējot arī etimoloģijas prasības.” *Ibid.*

⁴⁰ „Norādījumu autoriem izvirzījās daudz problēmu: 1) oriģinālvalodas skaņu atdarināšanas grūtības, 2) citvalodu īpašvārdu gramatizēšanas iespējas un to izmantošana, 3) attieksmes pret tradīciju”. *Ibid.*, at p. 426.

was present solely because of the way the name entered the Latvian language, i.e. if a non-English proper name entered the Latvian language through the English language, it is very likely that this name will be reproduced in the Latvian language in accordance with the pronunciation in the English language and not in the original language. The third and probably the most important problem is inclusion of foreign personal names in the Latvian declension system and addition of an ending even in cases where there had been no endings in the first place.

Even though this last criterion ensures the proper inclusion of a proper name in the Latvian language system, it is quite often criticized by non-native Latvians, especially by the representatives of national minorities. When adding masculine or feminine endings to names and surnames of foreign origin, many feel that their names are unnecessarily altered. Furthermore, this issue is important not only from the point of view of Latvian grammar and orthography, but also because of occasional linguistic connotations that are caused by these actions, as it is not uncommon that a word or a name in one language has a different meaning from the meaning in some other language. One of the most recent disagreements about the issue of Latvian endings for non-Latvian names occurred in Liepāja, where parents refused to give their child a name with the Latvian ending “-s”⁴¹. The parents of the child desired to give their child a traditional Russian name “Мирон”, which would be transliterated as “Miron” and added the ending “-s”, thus resulting in “Miron-s” - a name that corresponds to all the standards of Latvian literary language.

The parents argued that their intention was to give their child the name “Miron” and that it is not the same as “Miron-s”. Second, they seemed absolutely sure that when added the ending “-s”, the name “Miron” would be very similar to the word “mironis” (*eng.*-dead man, corpse), and that would make the future life of the child quite difficult. Moreover, they pointed out that the ending “-s” could be a reason for some misunderstandings when travelling abroad. The Registry Department, on the other hand, was quite straightforward in their explanations - the personal name is to be written in accordance with the Official Language Law of the Republic of Latvia. Therefore, the arguments of the parents were considered unfounded and the Registry Department sent an official refusal to the parents' submission for naming their child Miron. Still, the parents are unhappy with the current situation and in his interview⁴² on 8 April 2013 the father of the child said that they still had not registered the child. However, this is only one example of such dissatisfaction with the Latvian versions of foreign names.

The peculiarities of the Latvian language with regard to names and surnames concern not only names of foreign origin, but also Latvian names that have existed throughout the centuries. As language norms are adapted in accordance with changes in the rules of orthography and grammar, some names that had already

⁴¹ Online article, „Liepāja vecāki nepiekrīt reģistrēt bērnu ar vārdu Miron-s”, available from <http://www.irliepaja.lv/lv/raksti/liepajnieki/liepaja-vecaki-nepiekrit-bernu-registret-ar-vardu-mirons/>. Last visited on 23 April 2013.

⁴² Online article, „Скандал в Лиепая: Отец отказывается называть сына «покойником»”, available from <http://rus.tvnet.lv/novosti/obschjestvo/225211-skandal-v-lijepaje-otjec-otkazivajetsja-nazivat-sina-pokoynikom>, Last visited on 23 April 2013.

gained a strong foothold amongst native speakers of the Latvian language had to undergo some changes that were caused by linguistic issues aimed towards achieving new standards of Latvian grammar and orthography. For example, double noise consonants were a common occurrence in personal names; however, now they are not permitted, as the Latvian language does not take two noise consonants except when they are present in compounds. For example, a person who was formerly called "Otto Joffe" has to be called "Oto Jofe"⁴³.

Nevertheless, people who have inherited their names and/or surnames from their ancestors who had an opportunity to use double noise consonants in their names were not that keen on giving up the original form of their personal names just so that they would correspond to the new orthography. As a result, there is an interesting situation where people upon receiving new passports might find that their names that have contained double noise consonants have been changed to those with single noise consonants according to modern Latvian grammar and orthography, and further development of the situation hugely depends on the persistence of the person in question and the responsiveness of the authorities in question. This is interesting not only because of the obvious differences in the possibility of keeping one's name and/or surname intact, but also because it shows some certain inconsistency in the relevant authorities' policy; therefore, this issue will be investigated further in this paper.

⁴³ Article 13 of the Regulations of the Cabinet of Ministers No.96 „On Spelling and Use of Foreign Names in the Latvian Language”, dated 5 March 2002, available from www.likumi.lv/wwwraksti/2002/038/P2803N1.DOC. Last visited on 23 April 2013.

2. LEGAL REGULATION OF TRANSCRIPTION OF PERSONAL NAMES AND SURNAMES

As personal names are not just means used in communication and a way of recognition of people, but also a sort of personal item that is bound to occur in various documents, such as certificates, diplomas, medical records and many others, they become items of public access and therefore are obliged to be regulated by certain laws. Furthermore, regulation of this sphere of life affects absolutely everybody, so it might be considered as one of the most important intrusions in the sphere of private life. There have been many discussions regarding the subject of whether the State can interfere with the private life of its nationals by setting certain regulations for personal names, and in case it proves itself necessary, then whether there is a borderline for it, beyond which the State cannot go, and there still is no strictly unanimous opinion on this matter. Every State has its own practice regarding this subject, and practices may noticeably vary, depending on various factors, e.g. history, current legal obligations, being a signatory party to a treaty or convention, and so on.

However, this balance between conflicting human rights has been discussed for decades by various scholars. Most notably, Konrad Hesse ⁴⁴ developed the method of *praktische Konkordanz*.⁴⁵ This practical concordance “seeks to avoid, to the fullest extent possible, sacrificing one right against the other. Instead, it posits, a compromise should be sought between the rights in conflict which will respect their respective claims, by ‘optimizing’ each of the rights against the other.”⁴⁶ It can be said that this method goes even beyond balancing of rights, as none of the rights is of a higher or a lower value: thus, all rights are equal. Nevertheless, even this method cannot ensure an outcome that would be desirable for both parties whose rights are in conflict with each other. In this paper, conflicting rights under discussion are the right of an individual to use their name in the original form and the right of the State to protect its language, as well as to secure use of correct language among its nationals.

Latvia has succeeded in developing and applying legal regulations on this subject, introducing several guidelines on transcription and transliteration of foreign personal names, their reproduction in the Latvian language, as well as explicitly stating the rules for the orthography of existing Latvian names in order to ensure that those names that have not been written in accordance with the current regulations would undergo the amendments that are necessary for their correspondence to the current norms of Latvian grammar and orthography. Moreover, as Latvia is a member of the European Union, it is obliged to follow the rules and norms set forth by the Union relating to this issue, stated directly or implied by the laws due to the

⁴⁴ German jurisprudence scientist and judge at the Federal Constitutional Court of Germany.

⁴⁵ Practical concordance.

⁴⁶ O. de Schutter, *International Human Rights Law*, Cambridge, Cambridge University Press, 2010, at p. 453.

*acquis communautaire*⁴⁷, as candidate countries “must adopt, implement and enforce all the *acquis* to be allowed to join the EU. As well as changing national laws, this often means setting up or changing the necessary administrative or judicial bodies which oversee the legislation.”⁴⁸ Furthermore, Latvia has undertaken the obligations imposed on it by becoming a signatory party to the treaties and ratifying multilateral and bilateral conventions; therefore, it has to take them into consideration as well.

As in every legal issue relating to a country that has stepped out of its own legal framework and become a party to European and International treaties and conventions, a crucial role is played by international legal cooperation. As “[i]nternational judicial cooperation is a part of the overall international cooperation pursued within the framework of the Ministry of Justice,”⁴⁹ the question of domestic and international rules in different cross-border situations can be solved by cooperation between the judicial authorities. Even the issue of personal names can become a cross-border situation, because quite often transcription of personal names occurs due to the fact that a national of the Republic of Latvia marries a foreigner, whose name is further reproduced in the documents issued by the authorities of Latvia in accordance with the rules of the Latvian language, therefore occasionally causing some problems with proving one’s identity upon returning to one’s home-country. For example, if after marriage with a Latvian national a person’s child is born in Latvia, the name in the birth certificate appears in Latvian, and upon visiting their home country some problems may occur regarding proof of this person actually being the parent stated in the birth certificate.

The interesting things to explore are the laws of the Republic of Latvia regulating the issue of personal names and surnames, as well non-domestic laws that regulate this sphere, be it of the United Nations or the Council of Europe. Quite often people who have their name transcribed or transliterated in the Latvian language and who decide to turn to the courts argue that the aforementioned actions violate their human rights, for example, regulations relating to the sphere of private life; or those relating to freedom of movement of persons, as by entering the European Union it has become one of the basic rights (e.g. see cases analysed in Chapter 3). Interestingly enough, the view on this issue in Latvian law on some levels differs from those at the non-domestic level, be it expressed through officials’ opinions, court decisions or organizations’ recommendations. However, one thing is clear - if there are explicit and precise regulations relating to this sphere, there should be no misunderstandings and no various ways of interpretation. That in turn would lead to redundancy of cases that end up in the courts because of this issue. Nevertheless, courts and committees still receive a noticeable amount of complaints about this

⁴⁷ “*Acquis communautaire*” is a French term referring to the cumulative body of European Community laws, comprising the EC’s objectives, substantive rules, policies and, in particular, primary and secondary legislation and case law – all of which form part of the legal order of the European Union (EU).” Available from Eurofond, at <http://eurofond.europa.eu/observatories/eurwork/industrial-relations-dictionary/acquis-communautaire>, last visited on 25 January 2014.

⁴⁸ *Ibid.*

⁴⁹ Website of the Ministry of Justice of the Republic of Latvia, available from <https://www.tm.gov.lv/en/participation-in-eu/international-judicial-cooperation>. Last visited on 27 April 2013.

issue, with different results. So for understanding the roots of these variable results, the laws governing this issue must first be reviewed.

2.1. Law of the Republic of Latvia

As mentioned before, the issue of reproduction of foreign personal names in the Latvian language by means of transliteration or transcription is governed by the laws of the Republic of Latvia. Moreover, the very issue of personal names is regulated by laws that concern the official language of Latvia as such, as personal names in Latvian are part of the Latvian language and they appear in all personal identification documents. Thus, laws regulating two spheres - personal names and their writing and usage and the Latvian language - are involved whenever there is a question about the transcription of personal names and surnames. Moreover, human rights must be taken into account as well. First and foremost, the Constitution of the Republic of Latvia must be considered, and Article 4 of the Constitution reads that “[t]he Latvian language is the official language in the Republic of Latvia.”⁵⁰

Furthermore, and as also mentioned before, this issue concerns human rights; therefore, Chapter VIII of the Constitution (Fundamental Human rights) that came into force in 1998 is of great importance in relation to this topic. Of most importance are Articles 96⁵¹ and 114⁵², the latter being emphasized mostly by Russian speaking nationals of the Republic of Latvia, claiming that adding Latvian endings to their names and surnames violates their rights to preserve their ethnic identity. Of course, where there are rules, there are exceptions, and Article 116⁵³ provides for restrictions on the rights set forth in Article 96 in certain circumstances, as explicitly stated in Article 116.

Nevertheless, the issue of personal names and their reproduction is primarily regulated by the Official Language Law⁵⁴, Section 19, that stipulates first that “[n]ames of persons shall be presented in accordance with the traditions of the

⁵⁰ Constitution of the Republic of Latvia (Satversme), available from <http://www.likumi.lv/doc.php?id=57980>. Last visited on 29 April 2013. Translation in English available from www.vvc.gov.lv.

⁵¹ Article 96 reads: “Everyone has the right to inviolability of his or her private life, home and correspondence.” *Ibid.*

⁵² Article 114 reads: “Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.” *Ibid.*

⁵³ Article 116 reads: “The rights of persons set out in Articles ninety-six, ninety-seven, ninety-eight, one hundred, one hundred and two, one hundred and three, one hundred and six, and one hundred and eight of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs.” *Ibid.*

⁵⁴ Valsts valodas likums (Official Language Law), available from <http://www.likumi.lv/doc.php?id=14740>. Last visited on 1 May 2013. English translation available from <http://www.valoda.lv/media/Official%20Language%20Law.pdf>. Last visited on 1 May 2013.

Latvian language and written in accordance with the existing norms of the literary language"⁵⁵ and second that

There shall be set out in a passport or birth certificate, in addition to the name and surname of the person presented in accordance with the existing norms of the Latvian language, the historic family name of the person, or the original form of the personal name in a different language, transliterated in the Roman alphabet, if the person or the parents of a minor person so wish and can verify such by documents.⁵⁶

As happens with most of the laws adopted, this Section of the Official Language Law was not left unnoticed by various scholars, who expressed their opinion about it prior to its adoption. Interestingly enough, there were two main aspects from which this part of the law was viewed, namely the language aspect and the human rights aspect, i.e. two spheres were involved - legal and linguistic. As mentioned by Dr. Melita Stangrevica in the review of the Official Language Law⁵⁷, the private attitude towards forenames and their writing is more in the legal sphere, whereas the private attitude towards surnames relates to the linguistic sphere, directly affecting language, its norm and system. Therefore, the experts who discussed this Section of the law came from different backgrounds - linguists, human rights activists, lawyers, and so on.

A discussion on "Personal name and human rights" was organized in 1999, and the four main conclusions after it were:

- "personal names are related to maintenance and development of language unity"⁵⁸;
- "personal names are related to various aspects of human rights"⁵⁹;
- "there are problems in reproduction of personal names that should be solved by analysing every individual case"⁶⁰;
- the "contemporary situation and the lawful status of Latvia as a member of international community must be taken into account regarding the reproduction of personal names"⁶¹.

An interesting aspect of human rights during this discussion was brought up by Ineta Ziemele⁶², who said that personal names and their reproduction are closely related to respect for human dignity and protection of minority rights, as opposed to Valentīna Skujiņa⁶³, who saw this issue strictly from the linguistic point of view, stating that name and surname are mainly part of the Latvian language.

⁵⁵ *Ibid.* Section 19, Paragraph 1.

⁵⁶ *Ibid.* Paragraph 2.

⁵⁷ V. Ernstsone, D. Hirša, D. Joma et. al. *Valsts valodas likums: vēsture un aktualitāte*, Rīga: Zinātne, 2008 (at p. 161).

⁵⁸ „Personvārdi ir saistīti ar valodas vienotības uzturēšanu un pilnveidošanu”. *Ibid.*

⁵⁹ „Personvārdi ir saistīti ar dažādiem cilvēktiesību aspektiem”. *Ibid.*

⁶⁰ „Personvārdu atveidē ir problēmas, kas jārisina, analizējot katru atsevišķo gadījumu”. *Ibid.*

⁶¹ „Personvārdu atveidē jāņem vērā mūsdienu situācija un Latvijas kā starptautiskās sabiedrības dalībnieces pilntiesīgais statuss”. *Ibid.*, at p. 162.

⁶² Ineta Ziemele. Judge at the European Court of Human Rights.

⁶³ Valentīna Skujiņa. Linguist, researcher at the Latvian Academy of Sciences.

The institution that criticized the Section of the Official Language Law relating to the reproduction of personal names the most was the National Human Rights Office,⁶⁴ which expressed its views in its report in 2002.⁶⁵ Its concerns were mainly based on various complaints and objections from citizens of Latvia. Interestingly enough, the main concern was about changes in names that have long existed in the Latvian language and that have been passed from one generation to another, thus leading to the situation where a person who bears a surname that has been historically present in their family for many generations receives new personal documents with his or her name that has been amended in order for it to correspond to the rules and norms of Latvian grammar. For example, “the surname of Lithuanian origin *Čiapas* is changed to *Čaps*, the surname of Estonian origin *Saare* is changed to *Sāre*, the German *Lotte* is changed to *Lote* etc.”⁶⁶ Women’s surnames with masculine endings were also quite common; however, the law requires that women’s surnames must take feminine endings, for example, “*Rutkis- Rutke*, *Preiss- Preisa*”⁶⁷.

Furthermore, the National Human Rights Office in the abovementioned report draws attention to four aspects of human rights that are affected by reproduction of personal names and surnames in the Latvian language: the right to private life, minority rights, private rights and gender equality. As regards gender equality, men and women are equal; therefore, the requirement to use endings that correspond to the person’s gender could be a violation, especially because historically it was perfectly fine to use one form of the surname for both man and woman. Moreover, “this artificial change of surnames mostly relates to women’s surnames, which can be considered as gender discrimination, because the requirement, for example, to change the ending of the surname *Grava* to a masculine one (*Gravis*) does not exist.”⁶⁸ Nevertheless, at the moment of publication of the report the Framework Convention for the Protection of National Minorities was not yet ratified by Latvia, even though it was already signed, thus Latvia had already taken an obligation to achieve the standards set forth in the Convention, including Article 11 (1) that stipulates that “[t]he Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.”⁶⁹

Even though the National Human Rights Office in its report emphasizes that its objections relating to the Official Language Law are directly related to the fact that it affects not only foreigners and national minorities, but also nationals of the

⁶⁴ Since 2007 this is the Ombudsman’s Office.

⁶⁵ Valsts Cilvēktiesību Birojs. *Aktuālie cilvēktiesību jautājumi Latvijā 2002. gada 4. ceturksnī*. Available from http://politika.lv/article_files/2029/original/2002g4cet.pdf?1342701574. Last visited on 1 May 2013.

⁶⁶ “Piemēram, lietuviešu cilmes uzvārdu *Čiapas* pārveidojot par *Čaps*, igauņu cilmes uzvārdu *Saare* par *Sāre*, vācisko *Lotte* par *Lote* u.tml.” *Ibid.*, at p. 8.

⁶⁷ *Ibid.*

⁶⁸ „Visvairāk šī uzvārdu mākslīga maiņa ir attiecināma uz uzvārdiem sieviešu dzimtē, ko var uzskatīt par dzimumu diskrimināciju, jo prasība, piemēram, uzvārdam *Grava* mainīt galotni vīriešu dzimtē (*Gravis*) nepastāv”. *Ibid.*

⁶⁹ Framework Convention for the Protection of National Minorities, available from <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>. Last visited on 1 May 2013.

Republic of Latvia whose names undergo some changes because of this law, the linguists disagree. They believe that the emphasis on individual rights is not correct, as the history and traditions of the Latvian language must be taken into consideration, and the necessity to preserve the Latvian language prevails over the necessity to secure individual rights when it comes to reproduction of personal names in the Latvian language, as personal names constitute part of the language. As these differences of opinion have long been present, even now nothing has changed - part of society believes that reproduction of personal names in the Latvian language is necessary for its unthreatened existence, whereas others believe that in order to ensure security of human rights this is a sphere that requires a certain amount of flexibility as it cannot threaten the existence of the language. These two aspects have also been reviewed by domestic and international courts and committees; a detailed analysis is reflected in Chapter 3.

The Official Language Law is merely a basis for more explicit rules and regulations for the reproduction of personal names, and these regulations are issued by the Cabinet of Ministers of the Republic of Latvia. The ones that regulate this sphere in particular are Regulations Nr. 114 "On Spelling and Use of Names in the Latvian Language and Their Identification"⁷⁰. In Section 1 of these Regulations personal names are defined as "an integral part of a person's private life and its restrictions by reproducing or assimilating a person's name and surname are acceptable only to achieve legitimate aims."⁷¹ Even though it is clearly stated that personal names constitute a significant part of private life, further in Section 2 of the regulations it is stated that "personal names are units of a language - proper nouns for naming a person."⁷² Therefore, even here the issue discussed above about private life *versus* preservation of the language, or in other words - individual rights as opposed to the legitimate aims of the State, is present as well, as it is inevitable that a balance between these two interests needs to be struck.

The above-mentioned regulations provide the basic rules for writing and using names and surnames in the Latvian language, stating that they are to be written in accordance with the norms of the Latvian language and only with the letters of the Latvian alphabet, including such names and surnames in the grammatical system of the Latvian language. Notably double noise consonants, such as "bb, cc, dd, ff, gg, hh, kk, pp, ss, tt, vv, zz"⁷³, are not allowed, as provided by Section 2 of the Regulations. Furthermore, as provided by Section 6 of these Regulations, Latvian endings are added to names and surnames reproduced in the Latvian language even when there had not been such endings in the original form of the name and/or surname, and these endings have to correspond to the gender of the

⁷⁰ "Noteikumi par personvārdu rakstību un lietošanu latviešu valodā, kā arī to identifikāciju", available from <http://www.likumi.lv/doc.php?id=85209>. Last visited on 1 May 2013.

⁷¹ „Personas vārds un uzvārds ir šīs personas privātās dzīves neatņemama sastāvdaļa, un tās ierobežojums, atveidojot vai pielīdzinot personas vārdu vai uzvārdu, pieļaujams tikai leģitīmu mērķu sasniegšanai.” *Ibid.* Section 1, paragraph 3.

⁷² „Personvārdi ir valodas vienības – īpašvārdi personas nosaukšanai.” *Ibid.* Chapter 2, item 7.

⁷³ *Ibid.* Section 2, paragraph 11.2.

person⁷⁴. Accordingly, representatives of national minorities see this rule as unnecessary and influencing their national identity and human rights activists see it as possible discrimination, as mentioned before. The exceptions, as stipulated in Section 2 of the Regulations, are names of foreign origin that are indeclinable, as they end with “-ā, -ē, -ī, -ī, -o, -u, ū.”⁷⁵ Furthermore, the Regulations provide guidelines for transcribing or transliterating foreign personal names in the Latvian language in addition to rules for writing personal names of Latvian origin, transcribing and transliterating foreign personal names in the Latvian language as close as possible to their pronunciation in the original language. However, if a person wishes, it is possible to include the original or historical form of the name or surname in personal identification documents, as provided by the Regulations of the Cabinet of Ministers No. 134⁷⁶.

This issue is seemingly strictly regulated by these Regulations, with a remark that for transcription or transliteration of foreign personal names in the Latvian language instructions issued by the Academy of Sciences must be taken into account.⁷⁷ However, as mentioned before, a personal name is part of a person's private life, influencing not only the linguistic aspect of the Latvian language, but also many other aspects of the person's life, their private and social relations, their family life and correspondence, self-identification, and so on. That is why this issue is so important and the laws of the Republic of Latvia are constantly being questioned not only by human rights activists, but also by those who have been affected by these laws and regulations, including both Latvians who have lived in Latvia for generations and are (or were) proud bearers of their surnames, and foreigners or representatives of national minorities who have gained a strong connection with Latvia either by marrying someone from Latvia or by some other means. All in all, everyone is equal before the law, and everyone should enjoy equal protection by law as well as equal rights, and this is also stressed by various obligations Latvia has undertaken. Moreover, every State that is a signatory party to international treaties and conventions has a positive obligation to treat different situations differently to ensure such equality. However, quite often it is not so, and reasons for it may vary.

2.2. International law

As Latvia is not an isolated State but is constantly developing, its laws are being developed proportionally to the international obligations it undertakes, be it by

⁷⁴ “Katram personvārdam jābūt ar latviešu valodas gramatiskajai sistēmai atbilstošu galotni vīriešu dzimtē vai sieviešu dzimtē (izņemot kopdzimtes uzvārdu formas ar sieviešu dzimtes galotni abu dzimumu personām un nelokāmos uzvārdus)”. *Ibid.* Section 6, paragraph 138.

⁷⁵ *Ibid.* Section 2, paragraph 15.

⁷⁶ „Personu apliecinošu dokumentu noteikumi” (Regulations on personal identification documents), available from <http://www.likumi.lv/doc.php?id=244720&from=off>. Last visited on 11 May 2013.

⁷⁷ „Atveidojot citvalodu īpašvārdus latviešu valodā, papildus šo noteikumu prasībām ņem vērā Latvijas Zinātņu akadēmijas Valodas un literatūras institūta (Latvijas Universitātes Latviešu valodas institūta) izstrādātos norādījumus par citvalodu īpašvārdu pareizrakstību un pareizrunu latviešu literārajā valodā un Latvijas Zinātņu akadēmijas Terminoloģijas komisijas ieteikumus, kas publicēti laikrakstā "Latvijas Vēstnesis".” *Ibid.* Section 3, paragraph 56.

joining the European Union, the Council of Europe, or the United Nations, as a result of which Latvia has signed many multilateral international conventions, or has become a party to bilateral or trilateral international treaties. Therefore, Latvia has undertaken obligations it has to follow, and it is essential that these obligations are in perfect harmony with the laws of the Republic of Latvia. Furthermore, as the issue of personal names is a sensitive one and it affects absolutely everyone, the views of the international organizations that Latvia is a party to must be taken into account.

2.2.1. Law of the European Union

Since Latvia joined the European Union in 2004, it is obliged to follow the rules set forth by the European Union⁷⁸, and it cannot be doubted that the European Union is an important item in protection of human rights, and “[a]s the twenty-first century unfolds, the EU is also likely to expand and develop its human rights mission”⁷⁹. First and foremost, the Treaty on the Functioning of the European Union⁸⁰ (TFEU) must be reviewed. Even though the issue of personal names is not strictly regulated by the TFEU, its Articles have been invoked in courts by persons who have felt that transcription or transliteration of their names in the Latvian language violates their rights. The articles of the TFEU that can be viewed as those that relate to the issue of personal names are those that prohibit discrimination, provide for free movement of persons and support equality of men and women.

As mentioned before, some human rights activists see the mandatory addition of endings to names and surnames that show a person’s gender as a violation of human rights, as well as the fact that feminine endings of common gender can be added to the names and surnames of both genders, whereas women are not allowed to keep their surnames that have historically taken the masculine ending “-s” (except for Latvian feminine nouns that end in “-s”, e.g. *Klints*, or surnames that end in “-us”, e.g. *Ledus*, as opposed to *Preiss* which has been changed to *Preisa*) might be seen as discrimination against women. However, Article 8 of the TFEU states that “[i]n all its activities, the Union shall aim to eliminate inequalities, and to promote equality between men and women.”⁸¹ Therefore, the necessity to show a person’s gender by the ending of their surname might not be viewed as an attempt to promote equality between men and women.

Furthermore, and with regard to discrimination, representatives of the national minorities residing in Latvia have repeatedly expressed their dissatisfaction with their names being included in the Latvian declension system and Latvian endings having been added. For example, a human rights activist who expressed his support to parents who did not want to name their child *Mirons* because it seems similar to *mironis*⁸² Ruslan Pankratov (*Руслан Панкратов* or according to his passport

⁷⁸ See *Supra* note 47.

⁷⁹ S. Greer, “The European Union”, in D. Moeckli, S. Shah, S. Sivakumaran (eds), *International Human Rights Law*, Oxford University Press, 2010, at p. 477.

⁸⁰ Treaty on the Functioning of the European Union, available from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>. Last visited on 5 May 2013.

⁸¹ *Ibid.*

⁸² See *Supra* note 41.

Ruslans Pankratovs) strongly opposes this feature of the Latvian language and has even created an organization “Give us back our names”⁸³, filed a complaint with a court and is currently awaiting judgment.⁸⁴ He and some other activists believe that this is discrimination based on their ethnic origin, and Article 18 of the TFEU states that “any discrimination on grounds of nationality shall be prohibited”.⁸⁵

These ideas of equal treatment and prohibition of discrimination are expressed in Council Directive 2000/43/EC⁸⁶, which also states that

The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.⁸⁷

Thus, Latvia has to take into consideration and obey not only the laws of the European Union, but also all the conventions it is a signatory party to, and discrimination on all grounds should be eliminated. However, it is for the court to establish if the addition of Latvian endings is discrimination, as alleged by Ruslan Pankratov and other activists. Nevertheless, at this point no court has established that discrimination is present with regard to transcription of personal names in the Latvian language.

Article 21 of the TFEU states that “[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.”⁸⁸ Furthermore, the European Parliament and the Council of the European Union have adopted the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States⁸⁹. This Directive may seem unrelated to the issue of personal names and their transcription or transliteration in the Latvian language; however, that is not so.

Freedom of movement is mainly ensured by the fact that a person’s documents are in perfect order. Furthermore, such documents are the way to ensure that family

⁸³ “Верните наши имена!”

⁸⁴ For more information, see his interview on <http://ru.focus.lv/content/ruslan-pankratov-my-dobemsya-chtoby-nashi-imena-ne-oblatyshivali>. Last visited on 5 May 2013.

⁸⁵ See *Supra* note 80.

⁸⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>. Last visited on 5 May 2013.

⁸⁷ *Ibid.*

⁸⁸ See *Supra* note 80.

⁸⁹ Directive 2004/38/EC of 29 April 2004, available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>. Last visited on 5 May 2013.

relations are clear to customs officers when travelling. For example, if a foreigner marries a citizen of the Republic of Latvia and their child is born in Latvia, the child receives a birth certificate and a passport in Latvia with a Latvian name. This may result in a situation where the foreign citizen while travelling with their child who had their documents issued in Latvia with their surname transcribed in the Latvian language may encounter some problems as one will have the surname in the original form and the other one - in the Latvian language. Even though such problems are unlikely to occur at customs/immigration control in Latvia, the purpose of the abovementioned Directive is to ensure that citizens of the European Union are able to move freely throughout the Union. And it is highly unlikely to expect that customs/immigration officers of the United Kingdom will recognize, for example, John Wordsworth as the father of Anna Vērdsvērta⁹⁰. This problem of identification as members of one family has been brought up by several applicants, including *Mentzen/Mencena* (Chapter 3.2.1); nevertheless, this problem is diminished by the fact that the original form of the name can be entered in the passport as well.

2.2.2. Law of the Council of Europe: European Convention on Human Rights

As the three pillars of the Council of Europe are democracy, human rights and the rule of law⁹¹, it is no wonder that it has a huge influence on the protection of human rights. As Manfred Nowak writes⁹², the Council of Europe is one of the three intergovernmental organizations that deal with human rights, along with the European Union and the Organization for Security and Cooperation in Europe. Since the European Convention on Human Rights (ECHR) entered into force in 1953 and the European Court of Human Rights was established in 1959, the issue of protection of human rights has gained a strong foothold in the States that are members of the Council of Europe and signatory parties to the ECHR, including Latvia. Therefore, Latvia is obliged to protect the fundamental rights and freedoms of its nationals as is provided for in the ECHR. As mentioned before, the issue of personal names can be viewed from a purely linguistic aspect, but it can also be viewed from the aspect of human rights. This is supported by the fact that people have turned to the European Court of Human Rights because of the transcription of their surnames in the Latvian language.

Paragraph 1 of Article 8 of the ECHR states that “[e]veryone has the right to respect for his private and family life, his home and his correspondence”⁹³. However, as the States that are signatory parties to the Convention enjoy a margin of appreciation in determining whether they have complied with the provisions of Article 8, Paragraph 2 of the same Article provides for a possibility of certain restrictions of the individual’s rights set out in Paragraph 1 if it complies with the following requirements:

⁹⁰ See *Supra* note 5.

⁹¹ The official website of the Council of Europe, available from <http://hub.coe.int/>. Last visited on 5 May 2013.

⁹² M. Nowak, *Introduction to the International Human Rights Regime*, Leiden, Brill, 2003, at p.157.

⁹³ European Convention on Human Rights, available from http://www.echr.coe.int/Documents/Convention_ENG.pdf. Last visited on 6 May 2013.

- 1) it is in accordance with law;
- 2) it pursues a legitimate aim;
- 3) **it is necessary in a democratic society.**⁹⁴

Even though there is no direct reference to personal names in the ECHR, the European Court of Human Rights has long established that “[a]s a means of personal identification and of linking to a family, a person’s name none the less concerns his or her private and family life”⁹⁵ and that “[t]he fact that there may exist a public interest in regulating the use of names is not sufficient to remove the question of a person’s name from the scope of private and family life”⁹⁶. Therefore, there is no doubt that the issue of personal names falls into the scope of Article 8 of the ECHR.

Furthermore, as mentioned before, some representatives of national minorities feel that by adding Latvian endings to their names and surnames, Latvia violates their rights to belong to national minorities as well as discriminating against them as the representatives of national minorities, as they are not free to use their names in their documents in their native language. Needless to say, discrimination of any kind is prohibited by the ECHR, Article 14 of which states that “[t]he 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.”⁹⁷ Even though Article 14 can be invoked only in relation to some other Article of the ECHR, it is relevant with regard to the issue of transcription of personal names in the Latvian language, because it has already been established that Article 8 is applicable. Therefore, if a representative of a national minority feels that by transcription of their name and/or surname they have been discriminated against, Article 14 can provide sufficient grounds in support of their application. Nevertheless, to date this Article has not been examined by the European Court of Human Rights with regard to this issue.

Furthermore, apart from the ECHR, it is worth mentioning that Latvia has ratified the Framework Convention for the Protection of National Minorities⁹⁸ that is now in force. As mentioned before, the National Human Rights Office made a reference to it in its report of 2002 in relation to the Official Language Law when Latvia had already signed but not yet ratified the Convention. However, now it is fully binding and Latvia has undertaken to recognize and to protect the rights of national minorities to preserve and to use their language, including their right to use their names, surnames and patronyms in their minority languages, as provided by

⁹⁴ U. Kilkelly, *The right to respect for private and family life. A guide to the implementation of Article 8 of the European Convention on Human Rights*. Human rights handbooks, No. 1, available from <http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-01%282003%29.pdf>. Last visited on 6 May 2013.

⁹⁵ Case *Burghartz v. Switzerland*, Judgment of 22 February 1994, paragraph 24.

⁹⁶ Case *Stjerna v. Finland*, Judgment of 25 November 1994, paragraph 37.

⁹⁷ See *Supra* note 93.

⁹⁸ See *Supra* note 69.

Article 11 (1) of the Convention. Moreover, Latvia made declarations⁹⁹ under Articles 10 (2) and 11 (3), thus having no restrictions with regard to Article 11 (1). Therefore, the aspect of national minorities in relation to transcription or transliteration of personal names in the Latvian language is open for future development and examination, and it might influence certain features of Latvian language policy as well.

2.2.3. Standards of the United Nations

First, it is important to mention the Universal Declaration of Human Rights (UDHR), in particular its Article 12, which states that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”¹⁰⁰ Even though it “is not binding under international law”¹⁰¹, it still has a great influence on the international understanding of the concept of human rights, as it “represents an authoritative interpretation of the term “human rights” in the UN Charter”¹⁰². Furthermore, the term “privacy” as in this declaration had an influence on the UN Covenant on Civil and Political Rights (ICCPR)¹⁰³, as “the prohibition of interference with privacy in the narrow sense relating to the individual was adopted from Art.12 of the UDHR”¹⁰⁴, resulting in Article 17 of the ICCPR that has exactly the same wording as Article 12 of the UDHR.

The ICCPR and the ECHR may be seen as providing for similar rights in the sense of individual rights and privacy, as “it may be assumed that “private life” under Art.8 of the ECHR and “privacy” under Art.17 of the Covenant basically mean the same thing”¹⁰⁵. Therefore, the difference between Article 8 of the ECHR and Article 17 of the ICCPR is that Article 17 “does not contain a legal proviso allowing for restrictions in the interest of public order or similar purposes”;¹⁰⁶ therefore, unlike the case with the ECHR, the ICCPR does not allow States that are parties to it to enjoy a margin of appreciation. However, even though the ICCPR does not have a direct reference to personal names in the scope of Article 17, it is nevertheless implied, as privacy implies identity, and a person’s name and surname forms part of their identity.

⁹⁹ List of declarations made with respect to treaty No. 157, available from <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=ENG&NT=157&VL=1>. Last visited on 29 May 2013.

¹⁰⁰ Universal Declaration of Human Rights, available from <http://www.un.org/en/documents/udhr/>. Last visited on 6 May 2013.

¹⁰¹ See *Supra* note 92, at p. 76.

¹⁰² *Ibid.*

¹⁰³ International Covenant on Civil and Political Rights, available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. Last visited on 6 May 2013.

¹⁰⁴ M. Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, N.P. Engel, Kehl, 1993, at p. 294.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, at p. 290.

Furthermore, two more Articles of the ICCPR that indirectly relate to the issue of personal names are Articles 26 and 27, prohibiting discrimination on any grounds and protecting the rights of national minorities, respectively. These two Articles in relation to the issue of personal names go hand in hand, as representatives of national minorities are entitled to use their native language, including their names, in communication with other representatives of national minorities. And States are forbidden to restrict such rights based on national origin, thus placing representatives of national minorities in a less favourable position than others.

The UN institution that monitors States' compliance with the ICCPR is the Human Rights Committee. Regardless of its high standards, as "its decisions [...] are comparable to those of the European and Inter-American Courts of Human Rights"¹⁰⁷, the decisions of the Human Rights Committee are not legally binding and are only of advisory character. As M. Nowak writes, this may be the reason why the Committee has received significantly fewer complaints than the other human rights institutions whose decisions are legally binding. Nevertheless, the opinion and the decisions of the Committee should not be ignored, as countries that have undertaken obligations concerning protection of human rights can only gain from the opinion of the Committee, as it can fully monitor compliance by the State with the ICCPR, as well as provide comments and examine individual complaints.

All in all, the issue of personal names clearly goes under the laws concerning the right to private life (or privacy); even though the experts/linguists of the Republic of Latvia suggest seeing personal names more as a part of the language, and not as a part of individual rights. Moreover, the point of view that several representatives of national minorities have taken may imply that the issue of personal names and surnames is a part of their rights as national minorities, i.e., their right to use their language. Furthermore, human rights activists have long pointed out that the provisions of the Official Language Law regarding reproduction of personal names must be viewed from various aspects of human rights, not only from the aspect of right to private life. Nevertheless, the debates are still going on, despite the amount of treaties, conventions, regulations, and the like. People who have felt that they had fallen victim to the so-called "*Latvianization*" (or to be more precise - transcription or transliteration of their personal names and surnames in the Latvian language) have turned to various courts with different results. This will be analysed further in the paper.

¹⁰⁷ See *Supra* note 92, at p. 80- 81.

3. COURT PROCEEDINGS ON TRANSCRIPTION OF PERSONAL NAMES

Everyone is equal before the law, meaning that every individual is entitled to not only enjoy the rights provided for by the laws, but also must feel secure that their rights will be protected by their government. Furthermore, if the State the person lives in has joined certain European or international unions or organizations, it is most likely that by doing so the State has undertaken certain obligations that it is bound to follow, regardless of any other factors that might occur. If a person is sure that their rights have been violated, they are therefore entitled to seek justice by turning to the courts, finding substantiation for their claim in the applicable laws. First and foremost, the rights of absolutely every national of the Republic of Latvia are protected by the Constitution, and then, of course, rights and obligations can be seen in other laws, regulations, treaties and conventions, and so on.

Most cases that end up being brought before the court concern parties that have fallen victim to or at least feel that they have suffered because of other parties, mainly natural persons or legal entities. However, there are cases when certain persons believe that their rights have been violated by none other than the government of the State they live in and they are citizens of. The issue of personal names and court proceedings that concern this particular issue definitely belong to this category. As mentioned before, personal names constitute part of the individual rights of every person; they are part of private life, thus automatically becoming part of basic human rights. Nevertheless, personal names are proper names, and they constitute part of the language as well. Therefore, a person's rights concerning their name may come into conflict with State language policy. In such cases, people have the right to turn to the courts in an attempt to find out what the just solution is.

First and foremost, people who are holders of personal identification documents issued by the authorities of the Republic of Latvia have a possibility to turn to the various courts of Latvia, and even the Constitutional Court has delivered judgments on the matter of reproduction of personal names by means of transcription or transliteration. However, upon exhausting all available domestic remedies, citizens of States that are members of the Council of Europe can turn to the European Court of Human Rights, which has also delivered judgments on this issue. Furthermore, people are entitled to submit a claim to the Human Rights Committee or turn to the European Court of Justice. Therefore, possibilities are present for those who feel that their rights in relation to their personal names have been violated by the Republic of Latvia to defend their rights in various courts. The judgments delivered on this issue are curious to explore as they are the result of different lines of reasoning, setting forth standards for future claims of similar origin.

3.1. Court proceedings on the domestic level

One of the judgments that caused many frowns among linguists but many smiles among parents who believe that they are fully entitled to name their children the

way they wish (to a reasonable extent, of course) was the judgment in the famous *Oto/Otto* case. *Otto* is a name that has been present in the Latvian language for many decades and many generations; however, its orthography is not in accordance with the Regulations of the Cabinet of Ministers No. 114, because the double consonants “*tt*” are not permitted.¹⁰⁸ Therefore, there were constant battles between parents and Registry departments on transcription of this personal name, and on 17 November 2010 the Department of Administrative Cases of the Senate of the Supreme Court of the Republic of Latvia finally put this issue to rest.

3.1.1. *Oto/Otto* case

Outline of the case¹⁰⁹: the applicants turned to the Registry department of Riga Council after the birth of their son asking to register him with the name *Otto*. However, as the double consonant “*t*” is not permitted in Latvian literary language, registration was refused. Claiming that “*Otto*” is a traditionally used personal name in the Latvian language, the applicants turned to the District Court of Administrative Cases, which refused their claim. Next, the applicants appealed the decision in the Regional Court of Administrative Cases, which took a different view on things and by its judgment of 9 July 2010 obliged the Registry department to issue an administrative act for registering the child’s name as *Otto*. Next, the Ministry of Justice submitted a cassation appeal requesting to cancel the judgment of the Regional Court. However, the Senate took into account not only the Regulations of the Cabinet of Ministers and the Official Language Law, but also the aspects of human rights.

Upon determining whether the decision to refuse to register the child with the name *Otto* was lawful, it was necessary to examine whether this restriction of rights was in accordance with law, pursued a legitimate aim and was necessary in a democratic society¹¹⁰. No questions arose regarding the first two criteria, as the Regulations, mentioned before, explicitly state that a double “*t*” in personal names is prohibited, and preservation of the Latvian language truly is a legitimate aim. Therefore, the only criterion that was not found fully complied with was the restriction on being necessary in a democratic society. For it to be necessary in a democratic society it has to be established that it is socially necessary (whether there is a pressing social need) and proportionate (the benefit for society is greater than the restrictions imposed on the individual)¹¹¹.

Important principles emphasized by the Senate were consistency in the application of restrictions by the State and the threat imposed on the system of the Latvian language by certain derogations from overall norms and rules¹¹². By examining the principles of consistency, the Senate came to the conclusion that the State was not consistent in imposing such restrictions, as up until September 2009, when the Registry departments received an indication from the Ministry of Justice

¹⁰⁸ See *Supra* note 73.

¹⁰⁹ Case No. A420613110, SKA-890/2010, Judgment of 17 November 2010.

¹¹⁰ *Ibid.*, paragraph 8.

¹¹¹ *Ibid.*, paragraph 11.

¹¹² *Ibid.*, paragraphs 17 and 18.

stating that registration of the name *Otto* is unacceptable, the name was being duly registered by various Registry departments, even though it was not in accordance with the Regulations of the Cabinet of Ministers No.114. Therefore, it is clear that the State did not see this name as a threat to the language for a very long period of time. This was caused by the reason that many foreign names that had entered the Latvian language centuries ago found their way into Latvian families, thus becoming commonly used and accepted.

The fact that the name had gained popularity and was in active use for a long period of time directly relates to the second principle, established by the Senate, namely the threat posed to the language by certain derogations from overall rules and norms. It is pretty much clear that use of the name *Otto* in the past and, apparently, in the present has not influenced the Latvian language by any means. Therefore, it is a quite logical assumption that no such threat will occur in the future if the name *Otto* continues to be written with a double "t". The Senate repeatedly put emphasis on the fact that it certainly does not have any objections with regard to Latvian grammar and orthography; however, this is an exceptional case, as the names *Oto* and *Otto* have both been present in the Latvian language and it must be taken into account that with regard to personal names, even the slightest changes in the visual appearance of the name can mean a great deal to a person. Therefore, not having any objections to the restrictions regarding double "t" in personal names as such, the Senate ruled that in the case of *Otto*, the restriction is not proportionate and necessary in a democratic society.

To conclude, the Senate took the view that as a personal name is a part of a person's identity and privacy, even the slightest changes in the visual appearance of the name may influence the perception of the name and, respectively, of the person. Taking into account the fact that Latvia is the only place in the world where the Latvian language is used and preserved, the language itself is a protected value and should remain as such. Nevertheless, it is not an absolute rule that any derogation from rules and norms of the Latvian language constitutes a threat to the existence of the language; therefore, the legitimate aim of preserving the Latvian language is not sufficient to impose a restriction on a person's private life, and there are many factors for determining it. Therefore, each case has to be examined independently.

3.1.2. *Kardozu/Cardoso case*

Another case on transcription of personal names, or to be precise - on reproduction of a foreign personal name and surname from Portuguese into the Latvian language - was settled by the Department of Administrative Cases of the Senate of the Supreme Court of the Republic of Latvia on 9 July 2012. Even though the claim by the applicants was not satisfied, the Senate established principles and mentioned exceptions that are relevant for future claims of the same nature. Furthermore, the judgment concerns not only laws of the Republic of Latvia, but also international standards, including the ECHR, the ICCPR, and the TFEU.

Outline of the case¹¹³: On 18 March 2009 a child was born whose name in the birth certificate, issued by the Portuguese Embassy in Latvia, was registered as *Ricardo Daniel Baranov Cardoso*. However, after the child was acknowledged a citizen of the Republic of Latvia, following his parents' application, by the Persons' Status Control Division of the Office of Citizenship and Migration Affairs (OCMA), his name was to be reproduced in the Latvian language as *Rikardu Daniels Baranovs-Kardozu*. The parents refused to accept the Latvian version of the child's name and surname; nevertheless, the OCMA refused to change the name to its original form. Further, the parents submitted a claim with the District Court of Administrative Cases, which refused the claim, and after that the parents submitted a cassation appeal. The legal basis for the claim, according to the applicants, is Article 21 of the TFEU and Article 17 of the ICCPR.

The Senate once again had to examine whether this restriction of rights was in accordance with law, pursued a legitimate aim and was necessary in a democratic society¹¹⁴. In this case, similarly to the *Oto/Otto* case, there were no doubts about the first two criteria being fulfilled, and the main attention was to be focused on whether refusal to write the child's name in the documents in Portuguese is a restriction of private life that is necessary in a democratic society. As the issue of transcription was dealt with by various courts prior to the judgment in this case¹¹⁵, the Senate came to a conclusion regarding the criteria when interference by States with the rights of individuals can be considered a violation of human rights, the right to private life or privacy in particular, and these are as follows¹¹⁶:

- 1) circumstances similar to the *Raihman*¹¹⁷ case;
- 2) sufficient difficulties caused by reproduction of personal name or surname;
- 3) the name or surname has obtained a negative meaning after reproduction in the Latvian language.

The first criterion will be discussed further in the paper (Chapter 3.3.1); therefore, no analysis of it will be present in this chapter. The second criterion refers to the difficulties in administrative, professional or private areas, including free movement of persons, secured by Article 21 of the TFEU¹¹⁸. Even though it is quite probable that the child will later on develop a connection with Portugal, he is a citizen of the Republic of Latvia, and there is no way of determining if he will ever suffer significant difficulties when travelling to Portugal. Moreover, the original version of his name and surname can be included in his passport, in accordance with Regulations No. 134¹¹⁹. With regard to the third criterion, it is clear to any Latvian speaking individual that *Rikardu Daniels Baranovs-Kardozu* does not have any offensive or simply negative meaning in the Latvian language. Thus, in the case

¹¹³ Case No. A420598410, SKA-184/2012, Judgment of 9 July 2012.

¹¹⁴ *Ibid.*, paragraph 12.

¹¹⁵ See *Infra* Chapters 3.2.1. and 3.3.1.

¹¹⁶ See *Supra* note 113, paragraph 16.

¹¹⁷ See *Infra* note 136.

¹¹⁸ See *Supra* note 113, paragraph 21.

¹¹⁹ See *Supra* note 76.

under discussion none of the criteria were fulfilled; therefore, violation of the child's private life is not present in this case.

3.2. Decisions of the European Court of Human Rights

Since Latvia ratified the ECHR in 1997, it has undertaken the obligations imposed on it by the Convention. Moreover, as Latvia is a member of the Council of Europe, it means that nationals of the Republic of Latvia who feel that their rights have been violated by the State itself and who have exhausted all domestic remedies may turn to the European Court of Human Rights, hoping that their application would not be labelled manifestly ill-founded and rejected. This right has been used by several nationals of the Republic of Latvia, including those who felt that these violations were caused by reproduction of their personal names and surnames in the Latvian language by means of transcription or transliteration. Nevertheless, the European Court of Human Rights has the view that "[a]lthough the spelling of surnames and forenames concerns essentially the area of the individual's private and family life, it cannot be dissociated from the linguistic policy conducted by the State."¹²⁰

3.2.1. *Mencena/Mentzen case*

Outline of the case¹²¹: the applicant is a Latvian national who married a German national. Her husband's surname is *Mentzen*, and in the German language her surname would be *Mentzen* as well. Nevertheless, as the laws of the Republic of Latvia require foreign personal names to be written in accordance with the norms of Latvian literary language, transcribing them as close as possible to the pronunciation in the original language, and including them in the Latvian declension system, *Mentzen* became *Mencena* in her newly issued passport. Feeling that this decision violates Article 8 of the ECHR, the applicant started proceedings against the OCMA in the Court of First Instance of the Riga City Centre District. Then, after the court dismissed the claim, the applicant turned to the Riga Regional Court where the appeal was dismissed. Afterwards the applicant appealed to the Cassation Division of the Supreme Court where her appeal was once again dismissed. Then proceedings started in the Constitutional Court of the Republic of Latvia, where the only violation found by the Court was that the original form of the name appearing on the page 14 of the passport was unconstitutional¹²² and it should be moved to a more visible place¹²³.

The rights that the applicant claimed to have been violated are those provided by Article 8¹²⁴ of the European Convention on Human Rights. As neither of the parties questioned the applicability of Article 8, the European Court of Human Rights also came to the conclusion that it is applicable¹²⁵. Therefore, in order to

¹²⁰ Case of *Bulgakov v. Ukraine*, application No. 59894/00. Judgment of 31 March 2008, paragraph 43(a).

¹²¹ Decision on admissibility of the ECHR, application No. 71074/01, dated 7 December 2004.

¹²² Case No. 2001-04-0103, Judgment of 21 December 2001.

¹²³ Now the original or the historical form of the name appears on the 3rd page of the passport.

¹²⁴ See *Supra* note 93.

¹²⁵ See *Supra* note 121, the Court's assessment, paragraph 1 (a).

determine whether there had been a violation of the rights set forth in the abovementioned article, the court used the test described in the previous two cases. To be exact, the Court examined whether the interference from the side of the government in the private and family life of the applicant was in accordance with law, pursued a legitimate aim and was necessary in a democratic society¹²⁶. Certainly, similarly to the previous cases described, no questions arose as to whether the interference was in accordance with law; therefore, the criteria to explore are the other two - legitimate aim and necessity in a democratic society.

Constantly emphasized by the government of Latvia, supported by many scholars and understood by all the courts, is the fact that the Latvian language needs to be protected. Latvia is the only place in the world where the use of the Latvian language is not only possible, but also guaranteed and protected. Due to several historical occasions, including the only recent obtaining of independence, and the comparatively small number of native speakers of the Latvian language, it is clear even to non-linguists that if any language deserves increased protection, then it is the Latvian language. Therefore, the Court easily accepted protection of the language as a legitimate aim, regardless of it not being expressly mentioned in Article 8 of the ECHR. Thus, two of the three criteria were fully complied with.

The next question was whether the interference with the applicant's right to private and family life was necessary in a democratic society. By this is meant whether the interference was proportionate to the legitimate aim, and as usual, a fair balance has to be achieved between the needs of society and the rights of the individual; nevertheless, it must be kept in mind that States enjoy a wide margin of appreciation. The Court agreed that the applicant had suffered certain inconveniences; nevertheless, they were not very serious. Moreover, the difficulties arose not from the form of the transcribed name as such, but from the differences between the original form and the Latvian version, as it had complicated recognition of the applicant and her husband as members of the same family unit. The Court further acknowledged that the Constitutional Court had already made some improvements in this sphere possible by moving the original form of the name and surname from page 14 to the main page.

Nevertheless, the Court noted that this does not mean that all the difficulties mentioned by the applicant would be ruled out by moving the original form of the surname closer to the Latvian version, therefore "the risk of problems affecting the exercise of rights guaranteed by the Convention in certain cases cannot be ruled out. For this reason, the national authorities must continue to monitor developments in this sphere closely"¹²⁷. Therefore, even though the Court declared the application inadmissible, stating that Latvia had not stepped over the margin of appreciation, it admitted that interference had been present, implying that the current legal regulation might cause problems in the context of Article 8 of the ECHR, meaning that national authorities must pay attention to developments in this sphere, as certain changes are always possible. Those changes may appear in the judgments of other courts, decisions of committees, and so on. Thus, the government of Latvia should

¹²⁶ *Ibid.*, paragraph 2.

¹²⁷ See *Supra* note 121, Court's assessment, paragraph 2c..

not only stick to the existing rules, but also keep an open mind and accept that first, each case is to be examined individually, second, the language is constantly developing, influenced by many factors, and not every change is for the worse.

Furthermore, it must be noted that nothing is eternal, even decisions made by the European Court of Human Rights. As the “Convention is seen as a living instrument to be interpreted in the light of present day conditions¹²⁸”, therefore it is quite possible that the attitude of the European Court of Human Rights in interpreting the ECHR will change in relation to the issue of personal names, as the “Court’s case-law develops progressively and has overruled earlier decisions.”¹²⁹ So it must be borne in mind that future developments are quite possible, and by suggesting to monitor such developments on the domestic level, the Court also acknowledges that along with possible changes in domestic laws, the interpretation of the Convention might change as well. Thus the issue cannot be said to be settled once and for all.

3.2.2. *Kuhareca / Kuharec case*

The case of *Kuharec* alias *Kuhareca* is very similar to the previously discussed case of *Mentzen* alias *Mencena*, the difference being that in the previous case the applicant appealed against transcription of her surname, whereas in the case of *Kuharec* alias *Kuhareca* the applicant considered adding the ending to her surname to be a violation of her rights.

Outline of the case¹³⁰: The applicant is a non-citizen of the Republic of Latvia, she was born in Russia and lives in Latvia. She took her husband’s surname *Kuharec* that is of Ukrainian origin, and in the Ukrainian and Russian languages it is spelled without any additional endings as *Кухарец*. Upon receiving a non-citizen’s passport, the declinable ending “-a” was added to her surname. The applicant believed that the addition of such ending distorted her surname and refused to accept her passport. After trying in vain to persuade the OCMA to issue her a new passport without any endings, just as her surname was written in all other documents, the applicant turned to the Riga City Kurzeme District Court of First Instance. Having her claim refused by that Court, the applicant turned to Riga Regional Court. Having found no success there, the applicant further turned to the Senate of the Supreme Court, which refused the cassation appeal.

The European Court of Human Rights heard out both parties and noted that the Latvian language requires adding of declinable endings to surnames in order to integrate them in sentences and to ensure the correct syntax. Having heard the relevant provisions of the laws of the Republic of Latvia, the Court further examined the applicability of Article 8 of the ECHR, as the main argument of the applicant was that by adding an ending to her surname, the State violated her rights to private and family life, thus violating the aforementioned Article. As neither of the parties

¹²⁸ K. Reid, *A Practitioner’s Guide to the European Convention on Human Rights*, London, Sweet & Maxwell, 2012, at p. 68.

¹²⁹ *Ibid.*, at p. 69.

¹³⁰ Decision on admissibility of the ECHR, application No. 71557/01, dated 7 December 2004.

questioned the applicability of this Article, the Court had no reason to do so as well. In order to determine whether there had been a violation of rights provided by Article 8, once again it was necessary to establish if the interference was in accordance with law, pursued a legitimate aim and was necessary in a democratic society.

The government of the Republic of Latvia was positive that all the criteria were met¹³¹, as the transcription of foreign personal names is provided for by the Official Language Law and regulated by the regulations of the Cabinet of Ministers. Furthermore, as stated in previous court decisions, the preservation of the Latvian language can be considered as a legitimate aim, as the language in the opinion of many scholars is still quite fragile, and therefore is in need of strong protection. And with regard to the interference being necessary in a democratic society, the government emphasized the necessity to protect the Latvian speaking community against misunderstandings that might occur if surnames were indeclinable, as well as pointing out that such occurrence in the Latvian language might result in distortion of the language in the future.

The applicant, however, was of a different opinion. Even though this interference with her right to private and family life was in accordance with laws of the Republic of Latvia, she believed that it did not pursue any kind of legitimate aim and it was not proportionate to the aims to be achieved¹³². Furthermore, she believed that the threat posed to the Latvian language by adapting foreign surnames in their original forms was exaggerated, as there are many indeclinable names already, and they pose no threat at all. Additionally, trademarks take no declinable endings and they have found their way into the Latvian language with no apparent problems. The applicant also tried to appeal on the basis of the Framework Convention for the Protection of National Minorities¹³³, stating that she was discriminated against because of her being a representative of a national minority; however, at the time of the proceedings Latvia had not yet ratified the Convention.

So it was up to the European Court of Human Rights to establish whether the interference corresponded to all three criteria so as to make it justifiable. As neither the applicant nor the government found the interference not prescribed by law, the Court agreed that the laws of the Republic of Latvia make such interference lawful. Second, similarly to the *Mentcen/Mencena* case, the Court acknowledged that protection of the Latvian language is a legitimate aim, even though not expressly stated in the wording of Article 8 of the ECHR. Once again, the main point of interest was the third criterion, that is, necessity in a democratic society. This issue has already proven itself to be the most debatable, as a careful balancing must be carried out between the needs of society and the individual¹³⁴.

The most salient point was the fact that the difference between the original form of the surname in Latin alphabetic transliteration *Kuharec* and the Latvian

¹³¹ *Ibid.* Government's submission.

¹³² *Ibid.* Applicant's submission.

¹³³ See *Supra* note 69.

¹³⁴ See *Supra* note 121, Applicability of Article 8, Court's assessment, paragraph b.

version of the surname *Kuhareca* was minimal, as opposed to the *Mentzen/Mencena* case, where the visual difference between both versions of the surname was quite noticeable. Nevertheless, the applicant had previously supported her application by several of her other documents (such as driver's licence and others) where her surname was transcribed without the ending "-a". However, there was no evidence that the difference of spelling had caused the applicant certain problems regarding her recognition as the same person named in all her documents. Furthermore, her surname had not gained any offensive or unpleasant meaning by the means of adding the ending "-a".

Moreover, the fact that her surname was included in the Latvian language system does not mean that it was *Latvianized*. And with regard to discrimination on the ground of nationality, the Court emphasized that endings are a part of the Latvian language, and they are used in transcribing and transliterating foreign surnames regardless of their origin, while Latvian names also take such endings. Therefore, the applicant's national identity was not being compromised, as she was still free to use the original form of the surname in communication and/or correspondence in the Russian or Ukrainian languages.

Therefore, based on the abovementioned arguments, the European Court of Human Rights declared the application inadmissible as manifestly ill-founded. The two cases previously described that went to the ECHR were indeed very similar, as they concerned transcription of foreign personal names in the Latvian language. Nevertheless, even though the *Kuharec/Kuhareca* case did not show that the transcription had caused any difficulty or inconvenience, the second case did. However, it can be seen that the applicant must prove that the difficulties caused by such actions are serious and significant, be it with regard to free movement or identification as members of a single family, for the application to be admissible. Or another option is to prove that the transcribed version of the name or surname has acquired an unpleasant or offensive meaning, which was not the case with the two applicants.

To conclude, the European Court of Human Rights admits that transcription of foreign personal names in the Latvian language in accordance with the rules and norms of the Latvian grammar constitutes an interference with the rights guaranteed under Article 8 of the ECHR. Furthermore, if there are no questions as to the interference being in accordance with law and pursuing a legitimate aim, the debatable question remains the third criterion - the necessity of such interference in a democratic society. The argument of protecting society against improper language is not carved in stone, and every rule has its exceptions. Nevertheless, States are entitled to enjoy a wide margin of appreciation, granted to them with regard to the Convention, recognizing the present variety of languages and their preservation to be under the jurisdiction of domestic courts.

3.3. Application of UN standards

Since Latvia is a Member State of the United Nations and has signed and ratified the ICCPR¹³⁵, it has undertaken to follow the guidelines set forth by the ICCPR. The implementation of the ICCPR is monitored by the Human Rights Committee, which can examine individual complaints. Such a complaint was filed by a citizen of the Republic of Latvia as well, the decision of the Committee delivered in 2010, and this person was *Leonid Raihman* alias *Leonīds Raihmans*.

3.3.1. *Raihman/Raihmans* case

Outline of the case¹³⁶: Leonid Raihman is a member of the Jewish and Russian speaking minorities, and he is a Latvian national. After his birth in 1959, his name and surname were registered as *Leonid Raihman*, and he lived using his name in all the official documents, including his passport, until 1998, when his name was unilaterally changed by the Latvian authorities to *Leonīds Raihmans* in his non-citizen's passport. In 2001 as a result of naturalization the applicant became a citizen of the Republic of Latvia and received a new citizen's passport with his name written as *Leonīds Raihmans*. The applicant tried to persuade the national authorities to change his name back to *Leonid Raihman*, claiming that *Raihman* was his family name for several generations, first applying to the State Language Centre, where his application was dismissed. Then he turned to the District Administrative Court, where his claim was rejected, making a note that in the *Mentzen/Mencena* case the Constitutional Court had made it clear that the Official Language Law was constitutional, and the transcription of personal names pursued a legitimate aim. The Regional Administrative Court supported the previous court's decision. Further, the applicant turned to the Department of Administrative Cases of the Supreme Court of the Republic of Latvia, where with regard to the ending "-s" the Court upheld the Regional Court's decision, but with regard to "-ī" instead of "-i" the case was sent back to the Regional Court.

The applicant claimed that there had been a violation of Articles 17, 26 and 27 of the ICCPR, stating that the right to spell his name in the original version is protected against unlawful or arbitrary interference, which had indeed occurred in his case as a personal name is part of a person's privacy. Furthermore, he stated that apart from being arbitrary, such interference had caused him several problems, such as conducting banking transactions, going through airport customs or other daily actions. Moreover, he believed that he was placed in a less favourable position than Latvians, as native Latvians are entitled to use their names, whereas he, along with other representatives of national minorities, was deprived of this right, putting emphasis on the fact that the Russian linguistic minority constitutes a notable part of the inhabitants of the Republic of Latvia, and they have long resided within the territory of Latvia. Furthermore, the applicant questioned the legitimacy of the aim

¹³⁵ See *Supra* note 103.

¹³⁶ Decision of the Human Rights Committee, communication No. 1621/2007, document No. CCPR/C/100/D/1621/2007, delivered in 2010.

of ensuring that Latvians are secured from the use of distorted language, saying that this interference was not proportionate to the aim sought to be achieved.

The State, unsurprisingly, disagreed with the submissions of the applicant, stating that he had not exhausted all domestic remedies. Furthermore, the transcription of foreign personal names is provided for by law, and the applicant had not been treated differently because of his ethnic origin, as the names of native Latvians are also regulated by the same regulations and the same rules and norms apply to them, thus ensuring a unified language system and the possibility to include names and surnames in a sentence. Moreover, an interesting point was brought up by the government - problems at customs are caused by other States, not Latvia¹³⁷; therefore, Latvia cannot be held responsible for that, and there was no evidence of other serious inconvenience suffered by the applicant because of the Latvian form of his name and surname being entered in his passport. Additionally, the applicant was still free to use the original form of his name in all his daily activities, regardless of the form of the transcribed name in the passport, where the original form could also appear on page 3, as a result of the decision of the Constitutional Court of the Republic of Latvia in the *Mentzen/Mencena* case¹³⁸. So, basically, the State argued that there had been no violation of the ICCPR.

The Committee, nevertheless, shared the applicant's view that he had exhausted all the available domestic remedies, as he had applied to the courts of various levels, and his assumption that the decisions of the Constitutional Court are legally binding is correct; and having regard to the fact that the issue of transcription of foreign personal names in the Latvian language was already once settled in the *Mentzen/Mencena* case, the applicant had the full right to believe that his case would have the same result, saying that transcription of his name pursued a legitimate aim and that he had an opportunity to include the original form of his name and surname at the page four of his passport. Therefore, the Committee perceived domestic remedies to be exhausted by the applicant¹³⁹.

With regard to the interference being in accordance with law, unlike Article 8 of the ECHR, which permits interference if it is prescribed by law, Article 17 of ICCPR has a slightly different view on a possible occurrence of such interference, as "the expression "arbitrary interference" can also extend to interference provided for under the law"¹⁴⁰ and that the "introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances"¹⁴¹. Therefore, being in accordance with law does not automatically mean that such interference is justifiable,

¹³⁷ *Ibid.*, paragraph 4.2.

¹³⁸ See *Supra* paragraph 3.2.1.

¹³⁹ See *Supra* note 136, paragraph 7.3.

¹⁴⁰ Office of the High Commissioner for Human Rights, General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17): 04/08/1988, available from <http://www.refworld.org/docid/453883f922.html>. Last visited on 15 May 2013.

¹⁴¹ *Ibid.*

and each case should be examined separately, carefully evaluating the particular circumstances and balancing the rights of the individual and, in this case, the language policy of Latvia, bearing in mind the aim to protect the fragile Latvian language.

So the Committee established that there had been an interference with the rights protected by Article 17 of the ICCPR, as privacy related to the identification of a person, and as after many years of uninterrupted use of the name *Leonid Raihman*, the applicant had to face difficulties imposed on him by the changes in his name, resulting in a “feeling of deprivation and arbitrariness, since he claims that his name and surname “look and sound odd” in their Latvian form.”¹⁴² Not unlike the European Court of Human Rights, the Committee is of the view that names and surnames constitute a significant part of a person’s identity, and being protected against arbitrary interference in one’s privacy includes protection against such interference in the right to use freely one’s name, even though it is not directly stated in the wording of Article 17 of the ICCPR.

So even though the interference was provided for by law and protection of the Latvian language, taking into account all the difficulties it had undergone, is a legitimate aim, the Committee nevertheless shared the applicant’s opinion that this interference was not proportionate to the aims to be achieved, as the inconvenience suffered by the applicant was greater than the benefit it had brought to society. Therefore, the unilateral modification of the applicants name after he had used the original form of the name for many decades was not reasonable and was arbitrary; thus the Committee found that the State had breached Article 17 of the ICCPR¹⁴³. And, upon establishing a breach of this Article, no other Articles were examined independently.

3.4. Differences in application of international standards

It is clear that as Latvia is a Member State of the Council of Europe and of the United Nations, and moreover, has ratified the ECHR and the ICCPR; it has undertaken obligations it must obey, including protection of the rights of its nationals, as set forth by these international documents. Nevertheless, the interpretation of these documents may differ, and the institutions in overseeing the correct interpretation and application of the ECHR and the ICCPR are the European Court of Human Rights and the Human Rights Committee, respectively. As can be seen from the cases discussed above, there are certain differences in the view of the ECHR and the Committee on the issue of transcription of personal names in the Latvian language; therefore, it is logical to assume that the standards of the ECHR and the ICCPR differ.

The articles under discussion were Article 8 of the ECHR and Article 17 of the ICCPR, both providing for respect of private life. As was established before, the terms “private life” and “privacy” have the same meaning, and both include the notion of personal names as part of one’s privacy. As names are used for a person’s

¹⁴² See *Supra* note 136, paragraph 8.2.

¹⁴³ *Ibid.*, paragraph 8.3.

identification, they secure one's identification as a member of a family, as well as a member of some community or national minority. The European Court of Human Rights, in order to establish whether there has been a justifiable interference with the rights provided by this article, examines if this interference was in accordance with law, pursued a legitimate aim and was necessary in a democratic society. Similarly, such lawfulness of interference, examined by the Human Rights Committee with regard to Article 17 of the ICCPR, needs to be examined in the same way, as "[t]he right to privacy may be limited in the interests of others, under specific conditions, provided that the interference is not arbitrary or unlawful"¹⁴⁴. Nevertheless, the difference in the decisions delivered by both institutions suggests that despite precise regulations, the perception of lawfulness and necessity of interference regarding personal names and their transcription in the Latvian language is a debatable issue.

Neither of the institutions that are entitled to oversee the correct implementation of the ECHR and the ICCPR, as well as the government of the Republic of Latvia and the applicants who filed complaints against Latvia with regard to transcription of their names, has ever questioned the aforementioned restrictions to be in accordance with law. The Official Language Law and the relevant Regulations of the Cabinet of Ministers are explicit enough to ensure the transcription to be provided for by law. Furthermore and with regard to the legitimate aim pursued by such transcription, the necessity to preserve and to protect the Latvian language is legitimate enough, especially taking into account the difficulties the language had to undergo during the Soviet regime. Moreover, linguists constantly emphasize the fact that the Latvian language is still very fragile, and as Latvia is the only place in the world where this language has guaranteed use, it needs to be protected even more strictly. So neither the European Court of Human Rights or the Human Rights Committee questioned the legitimacy of the aim.

This way, the only criterion where the discrepancy of general perception could have arisen is the necessity of such transcription in a democratic society. The European Court of Human Rights shares the view of the government of the Republic of Latvia on this issue. The government has emphasized that it is essential to protect Latvian nationals whose mother tongue is Latvian from incorrect grammar and orthography that might result from allowing certain people to keep the original forms of their names and/or surnames without their proper reproduction in the Latvian language, as "it was unacceptable for one person to be allowed to impose on the rest of society an obligation to use "unnatural" forms of language and, by the same token, a distorted idiom when people were perfectly entitled to use, read and speak proper Latvian."¹⁴⁵ As in the Latvian language nouns (with some exceptions), including proper nouns, take declinable endings in order to ensure the possibility of their inclusion in a sentence, as well to ensure proper syntax, personal names and surnames have to comply with the rules and norms of Latvian grammar as well. Therefore, by imposing certain restrictions that result in interference with the rights

¹⁴⁴ Icelandic Human Rights Centre, "The Rights to Privacy and Family Life", available from <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightsconceptsideasandfora/substantivehumanrights/therightstoprivacyandfamilylife/>. Last visited on 17 May 2013.

¹⁴⁵ See *Supra* note 121, Government's submission.

secured by Article 8 of the ECHR, the government believes that the means used to achieve the aims were proportionate, resulting in a fair balance between pressing social necessity and the rights of the individual.

The Human Rights Committee, on the other hand, was not that sympathetic with the government of the Republic of Latvia. Even though the European Court of Human Rights admitted that there are some difficulties that the applicants had to suffer as a result of transcription of their names, they were nevertheless insignificant enough as compared with the benefit which society gets. The Committee saw these difficulties as being more serious than they were presented. After establishing that such interference was not unlawful, it turned to the examination of it being arbitrary, thus being unreasonable and disproportionate to the aim achieved, bearing in mind the particular circumstances of the case. The particular circumstances of the case were that the applicant had long lived and used the original form of the name without any problems, thus “the interference entailed for the author presents major inconveniences, which are not reasonable, given the fact that they are not proportionate to the objective sought.”¹⁴⁶ Furthermore, the Committee saw the transcription of the name and the surname in the Latvian language as an “intrusive measure, which is not proportionate to the aim of protecting the official State language”¹⁴⁷.

Accordingly, the main difference between the views of the European Court of Human Rights with regard to the ECHR and the views of the Human Rights Committee with regard to the ICCPR is that the first sees interference with the rights of the individual as proportionate to the aim sought to be achieved, whereas the second finds the inconveniences suffered by the individual greater than the common benefit, thus the interference being disproportionate to the aim sought to be achieved. Furthermore, as mentioned before, as opposed to the ECHR, the ICCPR does not provide for a margin of appreciation. This could also be a reason why the European Court of Human Rights is keen on supporting the language policy of the Republic of Latvia, that is to say that even though there obviously had been interference with the Rights provided for by the ECHR, States have an opportunity to enjoy this margin of appreciation, as long as interference is reasonable and, in the Court’s view, proportionate to the aims sought to be achieved. Thus, cases of similar character are treated in the same way, provided that the applicants have exhausted the available domestic remedies and the Constitutional Court has established the laws in relation to the language policy of Latvia to be constitutional.

As the ICCPR does not provide an opportunity for States to enjoy such margin of appreciation, each case must be examined independently, taking into consideration that individual circumstances of the case are therefore called individual, as they might change in every case in particular. Furthermore, the Committee is aware of the fact that the *Mentzen/Mencena* case¹⁴⁸ is seen as a ground-breaking case, bearing in mind the changes following it¹⁴⁹, thus resulting in the fact that the government of Latvia after the decision of the Constitutional Court made a

¹⁴⁶ See *Supra* note 136, paragraph 8.3.

¹⁴⁷ *Ibid.*

¹⁴⁸ See *Supra* notes 121 and 122.

¹⁴⁹ Moving the original form of the name and surname closer to the main page of the passport.

step towards meeting the applicants halfway, removing the provisions that were unconstitutional. Thus, the Committee has the full right to believe that if a person submits a claim on the merits of transcription of names and surnames in the Latvian language, the courts on the domestic level will follow the pattern established in the *Mentzen/Mencena* case, regardless of the necessity to examine each case individually on account of particular circumstances. Thus interference which the Committee might see as arbitrary, other institutions, including the European Court of Human Rights, will see as proportionate to the aims sought to be achieved, eliminating the possibility for individuals to stand their ground for their right of privacy.

4. IMPACT OF COURT PROCEEDINGS ON TRANSCRIPTION OF PERSONAL NAMES ON THE CURRENT SITUATION

The fact that there have been many court proceedings on various levels, starting from the courts of first instance of the Republic of Latvia, going through the district and regional courts, ending up before the Senate of the Supreme Court, the Constitutional Court or before the European Court of Human Rights or the Human Rights Committee, resulting in judgments and decisions delivered by the abovementioned institutions, is a reason good enough to assume that there must be some changes following these proceedings. This is even further supported by the fact that similarly as there is no unanimous opinion among experts on the issue of transcription of personal names, there is no unanimous opinion on this issue among the institutions mentioned above. As there have been judgments delivered and opinions expressed of different character, some in favour of the applicants, some in favour of the government, it can be assumed that those in favour of the applicants might have established a pattern to follow, or at least had an influence on the language policy of Latvia, with regard to cases involving similar circumstances.

4.1. *Oto/Otto* and the Latvian language

After the Department of Administrative Cases of the Senate of the Supreme Court of the Republic of Latvia delivered the judgment in the *Oto/Otto* case¹⁵⁰, it was natural to assume that the judgment would have influenced following cases of similar character, thus eliminating the redundant necessity for parents to turn to the courts and follow the path of the applicants who had already won the case in order to name their child *Otto*. Nevertheless, it is not so, as no changes have been made to the relevant provisions¹⁵¹ of the Regulations of the Cabinet of Ministers, thus the prohibition on use of “*tt*” in names and surnames is still in force, making *Otto* illegal, as it is not in accordance with the rules and norms of Latvian literary language.

The institution in Latvia that provides consultations on language issues is the Latvian Language Agency¹⁵², and by calling their consultation line it is possible to obtain the information necessary regarding personal names as well. With regard to the possibility of registering the name *Otto*, the answer, of course, is that it is not in accordance with the rules and norms of Latvian literary language and as no changes in the Regulations of the Cabinet of Ministers have been made, following the aforementioned judgment in 2010, the name *Otto* is still incorrect¹⁵³. Therefore, people who wish to name their children *Otto* have to either make an arrangement with the Registry Department, or in case this does not go successfully, to follow the path of the parents who won the right to name their child this way, as the judgment applied only to that particular case and person.

¹⁵⁰ See *Supra* note 109.

¹⁵¹ See *Supra* note 70.

¹⁵² For more information, see the official website of the agency at <http://valoda.lv/>.

¹⁵³ Telephone interview on 17 May 2013.

The judgment in the *Oto/Otto* case was highly criticized by many language experts who believe that Latvian language issues are not under the court's jurisdiction. For example, Māris Baltiņš¹⁵⁴ and Ilze Rūmniece¹⁵⁵ expressed their views in an article¹⁵⁶ following the judgment. They pointed out that, first, the court stepped outside its jurisdiction, making a judgment in the sphere of Latvian grammar and, second, that the court did not take into consideration previously established practice where several courts had already ruled that the reproduction of personal names must be in accordance with the norms of Latvian literary language. Furthermore, they pointed out that there is no equality in unlawfulness, and even though the court did not question the norms of the Latvian language, the result of such judgment is the grant of certain privileges to particular persons, resulting in an absurd situation where the Registry departments, upon registering people with the name *Otto*, are required to violate the Regulations of the Republic of Latvia.

The most salient point of the linguists is that the court did not pay due respect to the linguistic aspect of the situation, as even the slightest derogations from the norms of the Latvian language might have unpredictable consequences in the future, as it is difficult to determine if a case has exceptional circumstances. Therefore, law-abiding authorities might be punished for following the rules. Furthermore, they pointed out that the fact that the issue was about only one additional letter does not mean that the issue is not important. If in one case the norms of Latvian literary language are overlooked, then there is no way of telling what norm of Latvian literary language will be questioned next, as by establishing one exception the grounds for similar claims in the future are open.

The abovementioned linguistic arguments play an important role in the issue of personal names, as it was established before that personal names are part of the language, and the norms and rules of Latvian literary language apply to them as well. Furthermore, the Latvian language is a language to protect, meaning that this protection must be supported by precise regulation of the linguistic sphere. However, as was pointed out, personal names are also part of an individual's rights, and the human rights aspect is also involved in cases dealing with personal names in the Latvian language. Even though the linguistic aspect of the language is important, and arguments of linguists are substantiated and sensible, language is not an isolated item. This issue must be viewed from both aspects, and neither of them is to be viewed independently in an isolated environment. As both the language and the human rights aspects are constantly developing, a fair balance between them must be achieved, and this is possible only by careful evaluation of the particular circumstances of the case, paying due respect to the State's language policy and to a person's rights to private life or privacy. Furthermore, neither of them is inferior to the other, and therefore both aspects are crucial in delivering a judgment on this issue.

¹⁵⁴ See *Supra* note 4.

¹⁵⁵ Chairperson of the Latvian Language Committee at the State Language Agency.

¹⁵⁶ M. Baltiņš, I. Rūmniece, „Par nekrietnu tiesas spriedumu latviešu valodas pareizrakstības jautājumos”, 2010, available from <http://www.apollo.lv/zinas/par-nekrietnu-tiesas-spriedumu-latviesu-valodas-pareizrakstibas-jautajumos/469802>. Last visited on 2 June 2013.

Nevertheless, the current situation is quite incomprehensible, as the Senate has already established that this name of German origin has long been present in the Latvian language, it has gained a strong foothold among Latvian speaking people and for decades the government has been perfectly fine with this name, thus making the decision to forbid *Otto* inconsistent with its previous policy. However, the current situation is that even though the regulations forbid it, there are people registered with the name *Otto*, and it is not the only name with “*tt*” in it in Latvia indeed, according to the statistics available from the database of the OCMA, the most popular names containing “*tt*” are:

(Table 1)¹⁵⁷

Vārds (Name)	Skaitis (Number)
OTTO	184
VIOLETTA	68
ŽANETTA	18
IVETTA	12
ITTA	10
JUTTA	8
GENRIETTA	6
LOTTE	6
MATTHIAS	6
NIKOLETTA	6
ANETTA	5
ATTIS	5
LORETTA	5
RITTA	5
VITTA	5
ANETTE	4
GRETTA	4
MARIETTA	4
OTTO JĀNIS	4
BRIGITTA	3

Interestingly enough, there are only 169 people named *Oto*¹⁵⁸, making this name less popular than the illegal *Otto*. Obviously, the situation is not normal, as in order for the laws and regulations to be obeyed and followed they have to be reasonable and rational, corresponding to the current situation and social needs, to ensure the

¹⁵⁷ Statistics available from <http://www.pmlp.gov.lv/lv/sakums/statistika/personvardu-datu-baze/>, results obtained by entering “*tt*” in the search engine. Last visited on 17 May 2013.

¹⁵⁸ *Ibid*, results obtained by entering „*Oto*” in the search engine.

normal functioning of a democratic society. As Ineta Ziemele¹⁵⁹ notes about the overall discretion of the government, “the fundamental principles of the government have to be thought through and appropriate to the specific situation in a particular society.”¹⁶⁰ Therefore, the rule of law will be effective only if it is well-functioning and appropriate to the needs of society. Being consistent in its decisions is an essential element of well-functioning government, and if for many decades “*tt*” was not seen as a threat to the Latvian language, the Senate of the Supreme Court rightly noted that there is no evidence of it suddenly posing such a threat now, and the fact that there are so many *illegal* names only shows that consistency and unanimity is still to be achieved in the future.

4.2. *Mentzen/Mencena* and *Raihman/Raihmanis*: similar issue, different results

The two cases can be considered as those to establish the most salient principles of application of international standards with regard to the language policy of transcription of personal names in the Latvian language and providing the domestic courts with points of reference in their future decisions on the same issues. As the *Kuharec/Kuhareca*¹⁶¹ case was decided on the same merits as the *Mentzen/Mencena*¹⁶² case, with the only difference being that the inconvenience suffered by the applicant was close to non-existent, it will not be referred to separately.

As was previously established, a difference in application of international standards is present, supported by the different decisions in the *Mentzen/Mencena* case and the *Raihman/Raihmanis*¹⁶³ case; therefore, as the decisions differ, it becomes quite confusing as to when to apply which principle. The first case is constantly referred to by various linguists and governmental institutions when expressing the view that Latvia complies with international standards and that the language policy it maintains is in conformity with the ECHR, interpreted by the European Court of Human Rights and therefore by the Council of Europe as such. This is understandable and appropriate to the circumstances of that case and similar cases, as there are many various language systems, each requiring its own standards and rules, and due to the great variety of languages, the unchanged transposition of personal names and surnames from one language into another without any amendments is impossible, even unnecessary, as it then would definitely threaten the Latvian language and violate the right of Latvian nationals to use their language freely and without limitation. Nevertheless, each case must be examined individually, as a fair balance needs to be achieved between the needs of society and the rights of the individual.

¹⁵⁹ See *Sure* note 62.

¹⁶⁰ „Valsts pārvaldes pamatos gūlušiem principiem ir jābūt ļoti pārdomātiem un konkrētai situācijai konkrētā sabiedrībā atbilstošiem.” For more information, see the interview with I. Ziemele, conducted by M. Libeka, available from <http://m.la.lv/cilvektiesibas-parprastas-un-neparprastas-%E2%80%A9-2/>. Last visited on 17 May 2013.

¹⁶¹ See *Supra* note 121.

¹⁶² See *Supra* note 121.

¹⁶³ See *Supra* note 136.

With regard to the rights of the individual, the Constitutional Court of the Republic of Latvia in its judgment¹⁶⁴ in the *Mentzen/Mencena* case, prior to the decision of its admissibility by the European Court of Human Rights, admitted that some provisions of the Regulations of the Cabinet of Ministers were unconstitutional. Therefore, certain difficulties of the applicant with regard to free movement and identification as a member of one family with her husband were diminished, as the original form of the name and surname was moved closer to the main page of the passport, thus securing the possibility to prove her identity more easily. These changes were noted by the European Court of Human Rights as well, resulting in a situation where the interference with the rights set forth in Article 8 of the ECHR were found not only justifiable, but also as having only a minimal impact on the daily lives of the applicants. Therefore, it can be said that the *Mentzen/Mencena* case had a huge impact on following cases of similar character, becoming a main point of reference for the courts and being evidence of domestic laws corresponding to the European Convention of Human Rights.

The *Raihman/Raihmanis* case, however, did not gain such popularity and ability to influence future decisions. There are obvious reasons for this. First, the government of the Republic of Latvia has expressed its opinion on this matter and is very protective of the language policy it maintains. Therefore, the application of the decision of the Human Rights Committee in future cases or even amending existing laws and regulations is not part of the language policy and would not contribute to the objectives of preserving and protecting the Latvian language. Second, the decisions of the Human Rights Committee are not legally binding. Nevertheless, as the Senate of the Supreme Court established in the *Cardoso/Kardoza*¹⁶⁵ case, “even though the Committee’s decisions are not legally binding, they refer to the norms of the human rights included in the Covenant. These norms (including the Committee’s interpretation) are legally binding.”¹⁶⁶

Furthermore, as the Senate established in the *Cardoso/Kardoza* case, the human rights standards in the ICCPR are higher than those in national regulations; therefore, the decision of the UN Human Rights Committee in the *Raihman/Raihmanis* case implies that the interpretation of the Constitutional Court cannot be applied automatically to all further cases of the same character¹⁶⁷. Thus, the Senate found that “the Covenant might include higher standards than the ECHR and therefore may promote the development of the Constitution, and used the constitutional supervision mechanism of the Constitutional Court to verify it.”¹⁶⁸ Thus, the Senate,

¹⁶⁴ See *Supra* note 122.

¹⁶⁵ See *Supra* note 113.

¹⁶⁶ „Lai arī komitejas apsvērumi tieši nav juridiski saistoši, tie norāda uz Paktā ietvertu cilvēktiesību normu tvērumu. Savukārt Paktā ietvertās cilvēktiesību normas (ņemot vērā komitejas sniegto interpretāciju) kā starptautisko tiesību normas ir Latvijai saistošas”, *Ibid*, paragraph 8.

¹⁶⁷ *Ibid*.

¹⁶⁸ „Tātad šajos nolēmumos Administratīvo lietu departaments konstatēja, ka Pakts var saturēt augstāku standartu nekā ECK un līdz ar to var veicināt Satversmes standarta attīstību, un izmantoja Satversmes tiesas konstitucionālās uzraudzības mehānismu, lai par to pārliecinātos.” M. Mits, *Eiropas Cilvēktiesību tiesas judikatūra Latvijas Republikas Augstākās tiesas nolēmumos*, 2012, at p.40. Available from <http://at.gov.lv/files/uploads/files/docs/AT%20petijums%20pabeigts.doc>. Last visited on 1 June 2013.

prior to delivering its judgment in the *Cardoso/Kardozu* case, referred a question to the Constitutional Court, asking whether the *Raihman/Raihman*s case has established grounds for further development of the issue, implying the possibility of a change in the existing points of law. Nevertheless, the Constitutional Court stated that there were no reasons to believe that the *Raihman/Raihman*s case stipulated any changes in the existing points of law, meaning that the matter of transcription of personal names was settled in the *Mentzen/Mencena* case¹⁶⁹ and the existing standards relating to transcription of personal names are constitutional.

Thus, as a result, the *Raihman/Raihman*s decision referred to that case in particular, resulting in a situation when, once again, if a person feels that their rights, guaranteed in Article 17 of the ICCPR, were violated by the State through transcription of their name and surname, and the circumstances of the case are similar to the circumstances of the *Raihman/Raihman*s case, that is, the person has lived and used the original form of the name for many years, that person has a good chance of gaining the right to use the original form of the name undisturbed in the future as well. Nevertheless, similarly to the *Oto/Otto* case, the question remains if there really is a necessity to go through the long chain of various courts to establish that right. Everybody is equal before the law and this equality cannot depend on a person's persistence and ability to support court proceedings for many years before a final decision is reached. However, so far the authoritative interpretation of international norms remains the decision of the Constitutional Court of the Republic of Latvia in the *Mentzen/Mencena* case; bearing in mind the exceptions stated by the Senate in the *Cardoso/Kardozu*¹⁷⁰ and in the *Oto/Otto*¹⁷¹ cases.

¹⁶⁹ See *Supra* note 113, paragraph 9.

¹⁷⁰ See *Supra* Chapter 3.1.2.

¹⁷¹ See *Supra* Chapter 3.1.1.

CONCLUSIONS

A personal name performs various functions. It is a means of identification of a person as a member of society, occasionally showing his or her relation to some particular community, and sometimes personal names play the role of an heirloom, proudly passed from one generation to another. Personal names in the Latvian language have undergone many changes, finally achieving the present form of requirements for them to be a proper part of the language. The necessity to transcribe foreign personal names in the Latvian language appeared as soon as Latvian speaking nationals were first exposed to foreign languages, including foreign personal names, many centuries ago. This exposure has also influenced customs of name giving among Latvian nationals that has led to a situation where many Latvian names are of foreign origin. Nevertheless, occasionally forms of such names were different from what they are today, taking into consideration the relatively recent acquisition of independence and following development of regulations regarding personal names.

Furthermore, personal names can be seen from two very important yet different aspects, as they are not only part of an individual's rights, but also part of the language. Therefore, the language policy of the State may come into conflict with the individual's right to privacy, and if a compromise cannot be achieved at the very beginning of the conflict, the individual is entitled to turn to the court in order to defend their right to use the original form of the name freely and without restrictions. The points to be examined by the courts are if the restriction imposed on the individual constitutes an interference with the individual's rights to private and family life (or privacy), and if it does, then if this interference was in accordance with law, pursued a legitimate aim and was necessary in a democratic society. Neither of the parties involved in the proceedings, nor the courts that delivered the decisions or judgments, questioned the restriction being provided for by law and pursuing a legitimate aim; therefore, the only criterion the examination of which led to different results was the necessity of such restriction in a democratic society, thus seeing if a fair balance had been achieved between the rights of the individual and the common good.

The most salient point is that the legitimate aim of preserving the language is not sufficient to justify the restrictions imposed on individuals; therefore, the arguments of the State in favour of such restrictions must be very convincing. Additionally, consistency of application of such restrictions plays a crucial role. Furthermore, the concept of a threat to the Latvian language is a broad one and a careful analysis of each individual situation must be conducted prior to announcing that some name constitutes a threat to the fragile system of the Latvian language. Such lack of threat was found in the *Oto/Otto* case, where it was established that the name had already gained a strong foothold among speakers of the Latvian language, and the State was inconsistent in its decisions, as up to some point the name was being duly registered by Registry departments. Furthermore, neither of the Courts questioned Latvian grammar, admitting that it is not under their jurisdiction; however, not having any objections to the regulations as such, the exceptional

circumstances of the case were taken into account, proving that being in accordance with law does not automatically mean that interference is justifiable.

This view on the issue of transcription of personal names in accordance with the rules and norms of Latvian grammar and orthography was shared by the Human Rights Committee of the United Nations, which stated that even interference that is prescribed by law may be arbitrary. Once again, the individual circumstances of the case may play a crucial role in establishing whether interference was justifiable, taking into account the consistency of the State's prior decisions with regard to language policy. The case examined by the Committee was the *Raihman/Raihman*s case where the particular circumstances of the case amounted to the applicant's name being unilaterally changed by the State after many decades of untroubled use of the original form of the name. Therefore, this may be seen as inconsistency in the State's policy, as for many decades the original form of the name, being included in the passport and other official documents, was not seen as a threat to the language. Furthermore, the inconvenience suffered by the individual is another important criterion to be examined.

As was established by the European Court of Human Rights, the inconvenience suffered by the applicants in *Mentzen/Mencena* and *Kuharec/Kuhareca* cases was minimal, this diminishing of inconvenience aided greatly by the prior judgment of the Constitutional Court of the Republic of Latvia, admitting certain provisions of the Regulations of the Cabinet of Ministers to be unconstitutional. Therefore, people whose names had been transcribed or transliterated in the Latvian language gained a possibility to include the original form of their names or surnames closer to the main page of their passports, thus simplifying the recognition of such persons at customs, for example. Certainly, it was a huge step forward and this decision is an authoritative one, resulting in a situation where if the circumstances of the case are similar to the *Mentzen/Mencena* case, this case will most certainly result in the same judgment. Furthermore, the European Court of Human Rights, examining the correct application of the ECHR, refers to the margin of appreciation that the Member States are entitled to enjoy.

On the other hand, the ICCPR, correct application of which is overseen by the Human Rights Committee, does not provide any such margin of appreciation. However, in contrast to the European Court of Human Rights, the decisions of the Committee are not legally binding. Nevertheless, as norms on human rights included in the ICCPR are as such legally binding, the Committee's interpretation of it is authoritative. Therefore, the Committee's decisions are binding in relation to the case the decision refers to in particular. As a result, current exceptions as to when interference with the rights of an individual by the State with relation to the issue of transcription of personal names in the Latvian language is unlawful are as follows:

- 1) circumstances similar to the *Raihman* case;
- 2) sufficient difficulties caused by reproduction of a personal name or surname;
- 3) a name or surname has obtained a negative meaning after its reproduction in the Latvian language;

- 4) previously established practice with a non-existent threat to the Latvian language as in the *Oto/Otto* case.

Therefore, every rule has its exceptions. Nevertheless, as the authoritative judgment in this issue is the judgment in the *Mentzen/Mencena* case, delivered by the Constitutional Court of the Republic of Latvia, whereas judgments and decisions in the cases *Oto/Otto* and *Raihman/Raihmanis* relate to only those cases in particular, the question remains whether the best possible compromise between preservation of the Latvian language and protection of human rights in relation to personal names and surnames that are not in accordance with the rules and norms the Latvian language has been achieved. The answer is rather negative than positive.

The situation where parents who wish to name their child *Otto* have either to make some sort of arrangement with the Registry department or, if that is not successful, turn to the court, is not acceptable. Of course, it is indisputable that the Latvian language is a value that needs to be protected, and due to the enormous amount of different languages the unchanged transposition of foreign personal names in the Latvian language is not possible, nor it is necessary. Nevertheless, not all derogations from the rules constitute a threat to the Latvian language. The Senate of the Supreme Court has already established that *Otto* has not influenced the language in any way, and there is no evidence of it posing such a threat in the future; therefore, it is unreasonable not to make a compromise and to allow certain names to be registered in the Latvian language, regardless of their minor indentions from the regulations, especially because this is already happening¹⁷².

Thus, bearing in mind that the regulations on transcription and transliteration of personal names are in no way being questioned, especially because Latvia is the only place in the world where the use of the Latvian language is guaranteed, and the language needs to be protected and cherished, the main point is that certain flexibility is allowable. Personal names are not only part of the language, but also part of one's rights, and a fair balance between the rights of the individual and the necessity to preserve the language includes paying due respect to human rights. Therefore, every case is individual, and it needs to be examined if the particular case constitutes an actual threat to the language, or there are no reasons to forbid the particular name or surname to remain on the main page of the passport as the only version of the name. The best compromise would be to monitor the development of this sphere closely, while including the already established exceptions in the relevant regulations, thus eliminating the necessity to turn to the courts in order to prove that the individual circumstances of the case correspond to those cases that have already been settled. Otherwise the maintenance of a fair balance between the individual's rights and preservation of the language hugely depends on individual persistence and ability to support a claim for several years before a final judgment is delivered, if there are reasonable grounds to believe that it would be delivered on the same merits that the judgments in the cases discussed were delivered.

¹⁷² See Table 1, *Supra* note 157.