



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

FOURTH SECTION

DECISION

ON ADMISSIBILITY

Application no. 71074/01
by Juta MENTZEN also known as MENCENA
against Latvia

The European Court of Human Rights (First Section), sitting on
7 December 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

Mrs I. ZIEMELE, *ad hoc judge*,

and Mr O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 22 June 2001,

Having regard to the observations and additional observations submitted
by the Government and the observations in reply submitted by the applicant,

Having deliberated, delivers the following decision:

THE FACTS

The applicant is a Latvian national who was born in 1972 and currently
lives in Belgrade (Serbia and Montenegro). The respondent Government
were represented by Ms I. Reine, their Agent.

A. The circumstances of the case

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

1. The change in the written form of the applicant's surname

On 29 December 1998 the applicant married a German national, Mr Ferdinand Carl Friedrich Mentzen. The marriage was celebrated and registered at Bonn II Registry Office (*Standesamt Bonn II*) in Germany, which delivered a marriage certificate (*Heiratseintrag*) to the couple the same day. In the marriage certificate, the applicant was given her husband's surname "Mentzen".

In August 1999 the applicant asked the Nationality and Migration Service of the Latvian Ministry of the Interior (*Iekšlietu ministrijas Pilsonības un migrācijas lietu pārvalde* – "the Nationality and Migration Service") to replace her former Latvian passport that had been issued in her maiden name with a new passport in her married name. She made an express request for her new surname to be retranscribed correctly, without any amendment.

On 10 September 1999 the Nationality and Migration Service issued the applicant with a new Latvian passport. However, on page 3, the main page containing all the passport holder's basic details, her surname appeared as "Mencena", not "Mentzen". Officials at the Nationality and Migration Service explained to the applicant that the changes in the written form of her surname had been made on the basis of Regulation no. 174 on the transcription and identification of forenames and surnames in documents, which required all surnames and forenames to be reproduced "in accordance with the spelling rules of the Latvian literary language" and "as near as possible to their pronunciation in their original language". Consequently, the affricative consonant "tz" was replaced by the letter "c", which is pronounced [ts] in Latvian and therefore has the same phonetic value. Likewise, the inflectional ending "-a" was added to the applicant's surname, denoting the feminine nominative singular. However, in the section entitled "Special remarks" (*Īpašas atzīmes*) on page 14 of the passport, the Nationality and Migration Service affixed a special stamp certifying that the original form (*oriģinālforma*) of the surname was "Mentzen".

After trying in vain to persuade the officials at the Nationality and Migration Service who had issued her with the passport to rectify the written form of her surname, the applicant lodged an internal appeal with the departmental head. She argued among other things that the phonetic transcription and grammatical adaptation of her surname had violated her right to respect for her family life, as guaranteed by Article 8 of the Convention. On an unspecified date, the departmental head dismissed her

appeal on the grounds that page 14 of the passport provided the original version of the surname “Mentzen” in any event and that there had therefore been no alteration to the surname.

2. *The court proceedings*

The applicant issued proceedings against the Nationality and Migration Service in the Court of First Instance of the Riga City Centre District, which dismissed her claim in a judgment of 23 March 2000. After referring to an opinion of the linguistic consultations department of the Institute of the Latvian Language (*Latviešu valodas institūta Valsts valodas konsultāciju dienests*) dated 21 December 1999, which stated that the transcription of the German name “Mentzen” into Latvian had to be “Mencena” for a woman, the Court of First Instance found that the applicant’s surname had been transcribed in accordance with the applicable regulations, namely Regulation no. 310 on the passports of Latvian citizens, and Regulation no. 174 on the transcription and identification of forenames and surnames in documents. It also pointed out that persons finding themselves in that situation could always have the original form of their surname entered in the section of the passport entitled “Special remarks” if they so wished.

The applicant appealed against that judgment to the Riga Regional Court, arguing, *inter alia*, that the Court of First Instance had misconstrued the domestic legislation. In her appeal, the applicant criticised the very principle of “Latvianisation” of the written form of foreign surnames and forenames. In her submission, the two sets of regulations cited in the impugned judgment violated the right to respect for private life guaranteed by Article 8 of the Convention and Article 96 of the Latvian Constitution. The applicant also pointed out that neither the Official Language Act nor the relevant regulations required any grammatical or spelling changes to foreign trademarks or commercial undertakings. That being so, it was questionable whether such a practice with regard to names was either necessary or proportionate. Lastly, the applicant said that, owing to the change in the written form of her surname, she and her husband now had two different surnames in their identity papers, which made their identification as members of the same family more difficult.

In a judgment of 24 October 2000, the Regional Court dismissed the applicant’s appeal. After noting that the Nationality and Migration Service had fully complied with the applicable law and regulations, it accepted that the situation complained of could be regarded as interference with the right guaranteed by Article 8 of the Convention. However, it considered that the interference, which was intended to protect the Latvian language, was consistent with the second paragraph of that provision. With regard to the applicant’s submission that different rules applied to trademarks and company names, the Regional Court considered that it had no bearing on the

case before it, since people's names fell into a completely different category and were governed by special rules.

The applicant appealed on points of law to the Cassation Division of the Supreme Court, arguing, *inter alia*, that the protection of the Latvian language could not be a legitimate aim for which restrictions were permitted by Article 116 of the Constitution and Article 8 § 2 of the Convention. In a judgment of 31 January 2001, the Cassation Division dismissed her appeal, holding that, since the original form of the surname "Mentzen" appeared on page 14 of her passport, there had been no violation of her right to respect for her private life.

3. *The proceedings in the Constitutional Court*

After amendments to the Constitutional Court Act (*Satversmes tiesa*) had come into force, the applicant lodged an appeal (*konstitucionālā sūdzība*) with that court seeking a declaration that section 19 of the Official Language Act and Regulation no. 295 on the transcription and identification of forenames and surnames were unconstitutional. She submitted that the impugned provisions contravened Articles 96 and 116 of the Latvian Constitution.

The Constitutional Court decided the issue in a judgment of 21 December 2001 (case no. 2001-04-0103). After acknowledging that surnames came within the scope of private life, it stated:

"...

(2) ... The Constitutional Court accepts the applicant's argument that the 'Latvianisation' [*latviskošana*] of her surname affected her emotionally. The fact that her surname is not spelt in the same way as her husband's is a source of unpleasantness and social inconvenience. It makes daily life more complicated, as she has to give additional explanations on her relationship with her partner. While the misunderstandings are eventually cleared up, it all takes time.

... One of the main functions ... of the forename and surname is to make it possible to identify people and to determine the relationship of the person concerned with his or her family.

In view of the applicant's psychological attitude to the transcribed surname and the complications it entails in daily life which, especially abroad, can be seen in the difficulty which others have in determining her relationship with her family, and since the stability of the surname affects not only the individual's private life but also the interests of society, the provision requiring foreign surnames in passports issued in Latvia to be transcribed in accordance with the traditions of the Latvian language and its linguistic rules must be considered to constitute interference in private life.

...

(3.1) ... [The] interference in the applicant's private life is in accordance with the law, as it has been provided for by regulations issued by the Cabinet.

(3.2) The applicant's argument that the Latvian transcription of her surname does not pursue any of the aforementioned legitimate aims is without basis. Names are one of the features of language and the issue of the rules applicable thereto affects the entire system of language. It can be seen from the case file that the applicant in fact criticises the very principle of transcribing foreign surnames, which is a characteristic of the Latvian language. Consequently, in order to determine whether the interference ... pursues a legitimate aim, it is necessary to examine the role of the Latvian language in Latvia.

By declaring that the official language of the Republic of Latvia is Latvian, Article 4 of the Constitution accords it constitutional status. The constitutional status of the official language reinforces the legal basis for the use of Latvian in documents issued by the Republic of Latvia. Regard being had to the fact that a Latvian citizen's passport is an official document that not only identifies the person concerned, but also attests to a permanent legal link between the individual and the State, that person's surname and forename must be written in the official language.

... The Constitutional Court agrees with the opinion of the expert ... that the surname is used not just by the person so named, but also by society. Consequently, surnames must be regulated ... for the convenience of members of society.

Owing to historical factors, in particular the fact that the proportion of Latvians [of origin] on the national territory has diminished during the course of the twentieth century, the Latvian nation represents only a minority in some large towns, including Riga ..., and the Latvian language has only recently recovered its status as the official language. The need to protect the official language and to consolidate its use is, therefore, closely linked to the democratic regime of the Latvian State.

Regard being had to the fact that, ... in the context of globalisation, Latvia is the only place in the world where the existence and development of the Latvian language and, by the same token, the Latvian nation, can be guaranteed, a restriction or limitation on the use of [this] language ... on the national territory constitutes a threat to the democratic regime of the State.

[In a recent judgment,] the Constitutional Court of Lithuania also came to the conclusion that the official language helps to preserve national identity, unites the nation, and serves to express national sovereignty and the indivisibility of the State ...

That being so, the purpose of the interference in the applicant's private life was to protect the right of other residents of Latvia to use the Latvian language freely throughout the national territory and to protect the democratic regime of the State. Accordingly, the interference ... pursued legitimate aims.

(4) ... [It] is necessary to examine whether the interference [in issue] was proportionate to the legitimate aims [it pursued].

(4.1) ... the Constitutional Court has no doubt that the written form of names in documents has a direct bearing on the other spheres in which the language is used, as they are closely connected. If the written form of foreign names in documents were only permitted in their original form, it would be coherent and logical for their use [in this form] to spread progressively, because names are used in different texts. It is impossible to isolate the written form of foreign names in identity papers from [their

written form in other types of document]. That would seriously threaten the quality of the Latvian language and, therefore, the function of [this] language in society ...

The evidence in the case file shows that the [impugned] interference has not prevented the applicant ... from exercising other rights she possesses, such as to cross her and other States' borders, to vote in elections and to receive mail. The inconvenience an individual might suffer in his or her daily life does not constitute a sufficient ground for not applying rules that are the consequence of the language's official status.

The Constitutional Court considers that the damage to the functioning of the Latvian language as a single system that would result from writing foreign names in their original form only would outweigh the inconvenience individuals might suffer as a result of using a passport issued in a surname transcribed in accordance with the traditions of the Latvian language.

In these circumstances, the functioning of the Latvian language as a single system ... constitutes a social necessity, not a whim of the State authorities.

In some cases, transcription of the surname may make it more difficult to identify a person or to determine his or her relationship with his or her family (partner). However, the interests in protecting Latvian as the official language and, therefore, in protecting the democratic State system, justify [this interference].

(4.2) The applicant's allegation that the surname that she acquired by marriage has been transformed is unfounded. The transcription [*atveide*] of a name does not constitute its translation into Latvian (it is not the Latvianisation of the noun [as such]), but its adaptation to the grammatical particularities of the Latvian language.

There are a large number of systems of writing in the world, which are widely used, and the differences between them make it objectively impossible when passing from one system to another to preserve the original form. Due to the difference between alphabets, absolute conformity to the original is impossible even between languages using Latin characters. In Latvian, since the beginnings of written language, the settled practice has been to transcribe foreign names according to their pronunciation in the original language, not their written form. Regulation no. 295 translates this principle governing the written form of foreign names, which is a characteristic of the Latvian language, into a legal rule ...

Both the [Official] Language Act and Regulation no. 295 refer to rules of literary language. ... [At] the base of Latvian grammar are declensions. The word endings indicate the gender and number of ordinary and proper nouns and the function of the word in the sentence. The declinable word-ending of a name indicates the gender of the bearer of the name. In many Indo-European languages (such as English, German and French), either names have no grammatical gender or no distinction is made in the form of male and female surnames. Consequently, in these languages, foreign names can be incorporated into a sentence in their original form without destroying the grammatical system of the language. However, in Latvian, a foreign surname cannot be included in a sentence ... unless it is written in the way it is pronounced and has an ending. Consequently, the traditions governing the written form of foreign names are based on the grammatical particularities of the Latvian language.

The Constitutional Court cannot therefore accept the applicant's submission that the damage to her rights is greater than the benefit to the State. With a limitation of this sort on the private life of the individual, the State enhances the stability of the Latvian language system. Compliance with the codified traditional rules ... in all spheres of use and writing of names, including documents, plays an integral role in the concrete historical circumstances of the State in establishing the status of the official language.
...

(4.3) In order to reduce the inconvenience caused by the transcription of a person's name as far as possible, the [Official] Language Act provides: '[When] the person concerned ... so wishes and is able to produce documentary evidence [of it], the original form of the foreign surname shall be indicated in the passport, in addition to his or her forename and surname as transcribed ...'

The meaning of the expression 'in addition to' [*papildus*] has been defined by the Cabinet in its Regulation no. 310. Paragraph 6 of this regulation provides: '... when the person concerned so wishes, the original form of his or her surname and forename shall be entered in the section "Special remarks", in accordance with the documentary evidence [supplied] ...' ...

However, section 3 of Directive no. 52 issued by the head of the Nationality and Migration Office ... provides for the original form to be entered only on page 14 of the passport, that is to say after the other [relevant personal] details. ...

Regard being had to the fact that, by choosing the place where the original form of the surname ... should be entered, the Cabinet has not done all in its power to ensure that the transcription of the surname causes the least harm to the individual, the provision of Regulation no. 310 ..., which provides that the original form ... is to be entered in the field 'Special remarks', constitutes disproportionate interference with private life ... and is therefore incompatible with Article 96 of the Constitution and section 19(2) of the Official Language Act."

On the basis of this reasoning, the Constitutional Court found section 19 of the Official Language Act, which establishes the general principle that foreign surnames are to be transcribed phonetically and adapted grammatically, consistent with Article 96 of the Constitution. However, it declared the regulation requiring the original form of the surname to be indicated on page 14 of the passport and not in a more visible location nearer the front to be unconstitutional, having regard to the fact that the main page of the passport was page 3. The Constitutional Court stated in particular that these provisions, including section 3 of Directive no. 52, would cease to be effective and would lapse on 1 July 2002.

B. Relevant domestic law

1. Constitutional and legislative provisions

Article 4 of the Latvian Constitution (*Satversme*) provides: "The Latvian language is the official language in the Republic of Latvia." Article 96 of

the Constitution guarantees “inviolability of private life, the home and correspondence”. However, Article 116 permits restrictions on the exercise of that right in order to “protect the rights of others, the democratic structure of the State, public safety, welfare and morals”.

Section 3 of the Forenames and Surnames (Written Form in Documents) Act of 1 March 1927 (*Likums par vārdu un uzvārdu rakstību dokumentos*), which has been repealed, laid down that forenames and surnames of foreign origin were to be written as they were pronounced in Latvian, with the adjunction of the appropriate inflectional ending.

Section 18 of the former Linguistic Act (*Valodu likums*), which was in force until 31 August 2000, provided:

“Latvian names shall be used in accordance with Latvian traditions and the rules of the language.

Names of foreign origin shall be transcribed and used in Latvian in accordance with the rules of transcription [*atveide*] applicable to names of foreign origin.”

Section 19 of the new Official Language Act (*Valsts valodas likums*), which was passed on 9 December 1999 and came into force on 1 September 2000, reads as follows:

“(1) Names shall be transcribed in accordance with the traditions of the Latvian language and the rules applicable to literary language, regard being had to the provisions of subsection (2) of this section.

(2) The historical form of the family surname of the person concerned or, if he or she ... so wishes and is able to adduce documentary evidence [of it], the original form of the foreign surname transliterated into the Latin alphabet, shall be entered in the passport and birth certificate in addition to his or her forename and surname transcribed in accordance with the current forms of the Latvian language.

(3) Regulations shall govern the spelling and identification of forenames and surnames and the spelling and use of foreign names in the Latvian language.”

2. Regulations adopted before 21 December 2001

The relevant parts of Regulation no. 174 of 14 May 1996 on the transcription and identification of forenames and surnames in documents (*Noteikumi par vārdu un uzvārdu rakstību un identifikāciju dokumentos*) provide:

Paragraph 1

“... In all documents drafted in the official language, the person’s name and surname shall be written in accordance with the spelling rules of the Latvian literary language, using only the letters of the alphabet of the Latvian literary language. All forenames and surnames (with the exception of indeclinable forenames and surnames) must have an ending that conforms to the rules governing nouns and adjectives in the Latvian language. The names of people of the female sex must have the ending of the feminine gender. The forenames and surnames of foreign origin ending in o, -ā, ē, ī, -u, -ū in the nominative singular are indeclinable in Latvian.”

Paragraph 2

“Irrespective of their etymology in Latvian, forenames and surnames of foreign origin must be written so as to be as close as possible to their pronunciation in the language of origin in accordance with the rules for transcribing foreign names. Depending on the sex of the person concerned, a masculine or feminine gender ending shall be added to forenames and surnames of foreign origin, unless the forenames or surnames are indeclinable.”

Paragraph 3

“If the form of the forename or surname entered in the documents delivered in the Latvian language is liable to make the holder’s identification more difficult, the original form of the forename or surname may be indicated in the passport in accordance with Regulation ... no. 310 on the passports of Latvian citizens ... If the language of origin does not use Latin characters, such indication will be through transliteration into the Latin alphabet.”

Paragraph 6

“The record of a person’s forename or surname in a document shall be legally identical to that contained in the birth certificate (or other document) if both records are wholly identical or the only differences between them are as follows:

(6.1) Each of the records is consistent with the grammatical or spelling rules of the Latvian language at different historical periods, [that is to say]:

(6.1.1) an ending has been added to the forename or the surname in one document, but not in the other;

(6.1.2) the ending of the forename or surname in each document is of a different declension;

...

(6.1.4) the forename or surname in each document is spelt differently;

...

(6.3) the forename and surname are written in a foreign language in one document and in Latvian in another;

...

(6.5) the forename or surname in each document is written using different rules for transcribing names of foreign origin.”

Regulation no. 295 of 22 August 2000 on the transcription and identification of forenames and surnames (*Noteikumi par vārdu un uzvārdu rakstību un identifikāciju*) largely repeats the provisions of the preceding regulation. The other relevant provisions of this regulation are as follows:

Paragraph 8

“If the person wishes to keep ... the historical form or original form of his or her surname and submits documents attesting to such form:

(8.1) the [competent] authorities shall indicate at a set point in the documents the historical form, original form or transliterated form of the person’s surname in the Latin alphabet ([that is to say] reproduced, letter by letter, from another alphabet);

...”

Paragraph 10

“The form of the surname ... written in Latvian shall be legally identical to the original form of the surname, the historical [form] or the form transliterated into Latin characters.”

Paragraph 12

“In copies and extracts, the forename and the surname shall preserve their original written form.”

Paragraph 14

“If the transcription of a person’s forename or surname is damaging to his or her vital interests, he or she may apply to the State Language Centre (*Valsts valodas centrs*) with a request for the name to be transcribed into Latvian in a form that is less damaging to his or her interests. The State Language Centre’s opinion on the manner in which the person’s forename and surname must be written in the official language shall be binding on the [competent] authorities.”

In Latvia the passport is the principal identity document of Latvian nationals. Paragraph 6 of Regulation no. 310 of 24 October 1995 on passports of Latvian citizens (*Noteikumi par Latvijas pilsoņu pasēm*), which was in force until 1 July 2002, provided that if a person wished to have the original written form of his or her forename and surname entered in his or her passport, it was to be entered in the section of the passport headed

“Special remarks” (“*Īpašas atzīme*”). Section 3 of Directive no. 52 issued by the head of the Nationality and Migration Office (the statutory predecessor to the Nationality and Migration Service) states that the original written form must appear on a special stamp affixed to page 14 of the passport.

3. Developments after the judgment of 21 December 2001

On 5 March 2002, following the Constitutional Court’s judgment cited above, the Cabinet adopted Regulation no. 96 on the transcription and use of names of foreign origin in the Latvian language (*Noteikumi par citvalodu personvārdu rakstību un lietošanu latviešu valodā*), meticulously codifying the rules for the transcription of foreign names. The relevant paragraphs of the regulation read as follows:

Paragraph 45

“In Latvian, feminine names, whether of Latvian or foreign origin, shall be formed and used with the respective feminine gender endings.”

Paragraph 48

“The equivalent of masculine names ending in -s shall be feminine names ending in -a or -e.”

Paragraph 54

“From masculine names ending in -ens ..., the feminine will be formed with the ending -a, for example: Rībens – Rībena, Kacens – Kacena.”

Paragraph 123

“[As regards names of German origin], [t]he provisions of the [preceding] paragraphs of this regulation shall not apply to consonants or specific groups of consonants, which are transcribed as follows:

...

(123.31) ‘tz’ [is transcribed by] ‘c’ ...”

On 18 June 2002, in order to comply with the Constitutional Court’s judgment of 21 December 2001, the Cabinet adopted a new Regulation no. 245 on passports of Latvian citizens and foreign permanent residents in Latvia and the travel documents of stateless persons (*Noteikumi par Latvijas pilsoņu pasēm, nepilsoņu pasēm un bezvalstnieku ceļošanas dokumentiem*). The relevant provisions of the regulation, which came into force on 1 July 2002 and replaced the aforementioned Regulation no. 310, provide:

Paragraph 4

“In passports, the surname and forename ... of the person concerned shall be written in the form required by the law and regulations governing the spelling of surnames and forenames in the Latvian language.”

Paragraph 6

“When the written form of the surname ... on page 3 [main page] of the passport is different from its written form in the documents in which that name is written in its original form in another language ..., the original form ..., transliterated into the Latin alphabet, shall be entered on page 4 of the passport if the person ... so wishes and is able to provide documentary evidence of [the form concerned]. The transliteration into the Latin alphabet shall be effected in accordance with Appendix no. 4 to this regulation.”

Paragraph 15

“A passport shall be issued when:

...

(15.6) the person wishes to receive a [new] passport to replace a valid Latvian citizen's passport ...”

C. Comparative law

In a judgment of 21 October 1999, the Lithuanian Constitutional Court (*Konstitucinis teismas*) ruled on the conformity with the Lithuanian Constitution of a resolution of the Supreme Council dated 31 January 1991 on the written form of forenames and surnames in the passports of citizens of the Republic of Lithuania (*Dėl vardų ir pavardžių rašymo Lietuvos Respublikos piliečio pase*). The relevant parts of this judgment read as follows:

“... Article 14 of the Constitution provides that the official language shall be Lithuanian. The fact that the status of official language is enshrined in the Constitution means that Lithuanian has constitutional value. The official language preserves the identity of the nation, unites the civil nation, secures the expression of national sovereignty, the integrity and indivisibility of the State and the proper functioning of State institutions and local authorities. The official language is an important guarantee of equality before the law as it enables all citizens to enjoy the same relations with State institutions and local authorities when asserting their legitimate rights and interests. According the official language constitutional status also signifies that the legislature must ensure by law that the use of this language is protected in public life and must, in addition, afford the means for protecting the official language. Since Lithuanian has acquired the status of official language in the Constitution, it must be used in State institutions and local authorities and in all institutions, undertakings and

organisations located on Lithuanian territory. Statutes and other legal instruments must be promulgated in the official language. Clerical, accounting, management and financial documents must be drafted in Lithuanian. Lastly, correspondence between State institutions and local authorities, establishments, undertakings and organisations must be written in the official language.

...

Since the passport of the Lithuanian citizen is an official document that attests to the permanent legal relationship between the individual and the State, namely the nationality of the person, and since the question of nationality comes within the sphere of the public life of the State, the individual's forename and surname must be written in the official language. Otherwise, the constitutional status of that language would be called into question.

...

As has been stated above, the sphere in which the use of the official language is obligatory is public life in Lithuania. Consequently, it is not obligatory in private life, in which people may use the language of their choice. The resolution of the Supreme Council does not regulate private life. It only determines how forenames and surnames are to be written in the passports of Lithuanian citizens. ...

...

... It must be noted that the provisions of the Supreme Council's resolution requiring a person's forename and surname to be written in Lithuanian letters [and] as they are pronounced apply to all citizens without exception, without distinction on grounds of ethnic origin or otherwise. A person's membership of an ethnic group is a matter for that person to decide, that is to say that no one other than the person concerned is qualified to determine the ethnic group to which he or she belongs. Consequently, it is impossible to create exceptions enabling the official language to be used in accordance with the ethnic origin of the person concerned. Likewise, ethnic origin cannot be relied upon in support of a request for exemption from the provisions that result from the language's status as the official language. Otherwise, the constitutional principle of the equality of everyone before the law would be infringed. ..."

D. International law

Currently, the main international instruments on the use of surnames and forenames are the conventions of the International Commission on Civil Status (ICCS). In particular, Convention no. 14 on the Recording of Surnames and Forenames in Civil Status Registers signed in Berne on 13 September 1973 has been ratified by Germany, Austria, Greece, Italy, Luxembourg, the Netherlands and Turkey. Latvia is not a signatory to it. The relevant Articles of this convention read as follows:

Article 2

“Where a record is to be made in the civil status register by an authority of a Contracting State and there is produced for that purpose a copy of or extract from a civil status record or some other document that shows the surnames and forenames in the same characters as those used in the language in which the record is to be made, those surnames and forenames shall be reproduced literally without alteration or translation.

Any diacritic marks forming part of such surnames and forenames shall also be reproduced, even if such marks do not exist in the language in which the record is to be made.”

Article 3

“Where a record is to be made in the civil status register by an authority of a Contracting State and there is produced for that purpose a copy of or extract from a civil status record or some other document that shows the surnames and forenames in characters other than those used in the language in which the record is to be made, those surnames and forenames shall be reproduced as far as possible by transliteration, without being translated. If there are standards recommended by the International Organisation for Standardisation (ISO), they shall be applied.”

Article 4

“In the event of a discrepancy in the spelling of surnames or forenames between two or more of the documents produced, the person concerned shall be designated according to the civil status records or documents establishing his or her identity that were drawn up in the State of which he or she was a national at the time when they were drawn up.

For the purposes of this provision, the term ‘national’ includes not only persons who hold the nationality of a given State but also refugees and stateless persons whose personal status is governed by the law of that State.”

The relevant parts of the explanatory report to the convention, adopted by the General Assembly of the ICCS on 14 September 1973, provide:

“...

It is hardly necessary to emphasise the need for such uniformity. Since surnames and forenames are the main means of identifying a person, they must be consistent wherever he or she may be, and the uniformity must be reflected in all civil status records that concern him or her.

The Convention is essentially technical in nature. It is confined to prescribing that the surnames and forenames to be shown in civil status records are to be an exact reproduction of the surnames and forenames appearing in existing records or documents produced with a view to the making of a further record. ...

...

Article 2

...

Of the various systems for reproducing names, the Article chooses the literal system; all the letters which go to make up the surname and forenames are reproduced without modification. This system is the only one that will ensure uniformity, by avoiding, for example, the letter 'u' being changed into 'ou' or 'oe' or the letters 'cz' into 'c' or 'ch'.

The literal reproduction rule also applies to diacritic marks. Examples are the letter 'ü' with diaeresis or the letter 'ö' which will be copied as 'ö' and not changed into 'oe'. Diacritic marks must be reproduced, even if they do not exist in the language in which the record is to be made. If the record is typewritten, the diacritic marks are to be added by hand if necessary.

The first paragraph of the Article also provides that surnames and forenames shall be reproduced without being altered or translated. However, it should be remembered that the strictness of this rule, which is especially important where particles, declined names and forenames are concerned, is tempered, in appropriate cases, by the provisions of the second, third and fourth paragraphs of Article 1.

...

Article 3

...

Of the various systems of transposition, the Article chooses transliteration: each letter, with any diacritic marks, is reproduced by its equivalent in the other language.

...

Where there are no standards recommended by ISO, the transposition must, as far as possible, still be achieved by transliteration.

Thus, there are at present no standards for the transliteration of Latin characters into Greek characters. Transliteration does however seem possible in many cases, especially with the help of the transliteration rules contained in ISO/R843 (international system for the transliteration of Greek characters into Latin characters).

On the other hand, it seems clear that in the total absence of standards it is not possible to transliterate Cyrillic, Arabic or Hebrew characters into Greek characters, or Chinese characters into Greek or Latin characters. In these circumstances reproduction can be achieved, in the cases envisaged, by another process such as phonetic transposition. However, even in that event, translation is still forbidden. The surname and forenames must be reproduced by transliteration from the records and documents produced with a view to the making of the further record."

At its meeting in Berlin on 11 September 1992, the ICCS General Assembly adopted the following resolution:

“The ... Assembly ... is of the opinion that the phrase ‘*or some other document that shows the surnames and forenames*’, contained in the first paragraph of Article 2, covers any public document even if it does not emanate from a civil registrar, such as a passport of the person concerned.”

E. Community law

On 30 March 1993 the European Court of Justice (ECJ) delivered a judgment in *Christos Konstantinidis v. Stadt Altensteig, Standesamt, and Landratsamt Calw, Ordnungsamt* (C-168/91, European Court Reports 1993, p. I-1191). In this case, which concerned a referral by the Tübingen District Court (*Amtsgericht*) for a preliminary ruling, the ECJ had to consider the question of the compatibility of the transliteration of a Greek name with freedom of establishment, as guaranteed by former Article 52 of the Treaty establishing the European Community (which became Article 43 when the Amsterdam Treaty came into force). In that case, the name of the applicant in the main proceedings, Mr Christos Konstantinidis (*Χρήστος Κωνσταντινίδης*), a Greek national who worked as a masseur in Germany, was transcribed in a translation of his birth certificate and in the register of marriages as “Hrēstos Kōnstantinidēs”. This was the written form that resulted from the application of ISO Standard 18, as prescribed by Article 3 of ICCS Convention no. 14 (see above). The ECJ ruled as follows:

“11. ... [T]he national court’s two questions are to be regarded as seeking to ascertain, in substance, whether Article 52 of the Treaty is to be interpreted as meaning that it is contrary to that provision for the name of a Greek national who has settled in another Member State in order to pursue an occupation as a self-employed person to be entered in the registers of civil status of that State in a spelling differing from the phonetic transcription, whereby its pronunciation is modified and distorted.

12. In answering that question, it must first be borne in mind that, as the Court has stated on numerous occasions, Article 52 of the Treaty constitutes one of the fundamental legal provisions of the Community. By prohibiting any discrimination on grounds of nationality resulting from national laws, regulations or practices, that Article seeks to ensure that, as regards the right of establishment, a Member State accords to nationals of other Member States the same treatment as it accords to its own nationals ...

13. It must therefore be determined whether national rules relating to the transcription in Roman characters of the name of a Greek national in the registers of civil status of the Member State in which he is established are capable of placing him at a disadvantage in law or in fact, in comparison with the way in which a national of that Member State would be treated in the same circumstances.

14. There is nothing in the Treaty to preclude the transcription of a Greek name in Roman characters in the registers of civil status of a Member State which uses the Roman alphabet. It is therefore for the Member State in question to adopt legislative or administrative measures laying down the detailed rules for such transcription, in

accordance with the prescriptions of any international conventions relating to civil status to which it is a party.

15. Rules of that kind are to be regarded as incompatible with Article 52 of the Treaty only in so far as their application causes a Greek national such a degree of inconvenience as in fact to interfere with his freedom to exercise the right of establishment enshrined in that Article.

16. Such interference occurs if a Greek national is obliged by the legislation of the State in which he is established to use, in the pursuit of his occupation, a spelling of his name derived from the transliteration used in the registers of civil status if that spelling is such as to modify its pronunciation and if the resulting distortion exposes him to the risk that potential clients may confuse him with other persons.

17. It should therefore be stated in reply to the national court that Article 52 of the Treaty must be interpreted as meaning that it is contrary to that provision for a Greek national to be obliged, under the applicable national legislation, to use, in the pursuit of his occupation, a spelling of his name whereby its pronunciation is modified and the resulting distortion exposes him to the risk that potential clients may confuse him with other persons.”

COMPLAINT

The applicant complained under Article 8 of the Convention that the distortion of the written form of her surname in her passport constituted an unjustified and disproportionate interference with the exercise of her right to respect for her private and family life.

THE LAW

The applicant alleged that the manner in which her surname had been transcribed in her passport had infringed her right to respect for her private and family life, as guaranteed by Article 8 of the Convention. The relevant parts of Article 8 provide as follows:

“1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

1. The Government

The Government began by explaining certain particularities of the Latvian language, in particular the fact that all foreign names were transcribed into the language using the Latvian phonetic rules. That principle was as old as the Latvian written language itself. The first book printed entirely in Latvian, *Catechismus catholicorum*, a work by Saint Peter Canisius that was published in 1585 and translated into Latvian by German clergymen, followed that approach, in particular by transcribing the German affricative consonant “z” or “tz” as “c”. The Government also cited a work that had been published a hundred years later, *Latvian grammar* by H. Adolphi (1685), and the first unabridged translation of the Bible (1685-89), in which a similar solution was adopted. They referred, also, to two contemporary sources: Volume III of *Guidelines for the spelling and pronunciation of names of foreign origin in the Latvian literary language* by the Academy of Sciences (1960) and *Guidelines for the use and pronunciation of forenames and surnames in the Latvian literary language* (1998) by the State Language Centre. In short, the Government stressed that Latvians had at all times and in all places transcribed the German “z” and “tz” as “c”. Consequently, in imposing the same rule in Regulation no. 96, the Latvian government had done no more than to codify an already existing practice that was absolute and general.

The same applied to the appending of inflectional endings to names. Speakers of the Latvian language had always used such endings since the language had first come into existence. The Government acknowledged that the two aforementioned principles, namely the phonetic transcription and inflection, did not apply to commercial trademarks. However, the distinction was natural because, when speaking or writing, Latvian speakers mentally referred to the respective generic noun – “X” [shop], “Y” [refrigerator], “Z” [car] – even if the noun itself was not mentioned. Moreover, when trademarks were referred to in a document, they were always placed between inverted commas or written in italics.

The Government acknowledged at the outset that, in accordance with the Court’s settled case-law, Article 8 of the Convention was applicable in the instant case. They further accepted that by transcribing the applicant’s surname phonetically, the Latvian authorities had interfered with her right to respect for her private life, as guaranteed by that provision. They considered, however, that that interference complied with the requirements of the second paragraph of Article 8, that is to say that it was “in accordance with the law”, pursued a legitimate aim and was “necessary in a democratic society” to achieve that aim.

The Government said that they were satisfied that the interference was “in accordance with the law” within the meaning of Article 8 § 2 of the Convention. In that connection, they noted that in the applicant’s passport the national authorities had used the written form “Mencena” in accordance with section 18 of the former Linguistic Act and Regulations nos. 310 and 174, the latter having been replaced by Regulation no. 295 on 1 September 2000. Furthermore, none of the provisions of those regulations left any scope for arbitrary action on the part of the officials responsible for preparing birth certificates and passports. Foreign names could not be transcribed in just any fashion, but according to fixed rules that had existed for four centuries.

As to the “legitimate aim”, the Government acknowledged that the list of objectives set out in Article 8 § 2 of the Convention was exhaustive. However, they were convinced that the interference satisfied that provision, as it was “aimed at protecting the right of others to hear and use correct Latvian on Latvian territory by being able to identify people by their names and to ensure that Latvian was fully established as the official language of Latvia”. In that connection, the Government pointed out that it was only fairly recently that Latvian had recovered its status as the official language and that, during the fifty years of the Soviet regime, it had only been able to survive as a result of the Latvian people’s determination to carry on using it and, to the extent possible, to promote the use of their language. Even today, when the official status of Latvian was protected by the Constitution, the need to consolidate its use in public life was rendered even more important by the need to “maintain the identity of the nation, to unite and guarantee the functioning of the State generally” and to avoid the risk of its extinction in the future. Since Latvian was the official language of the State, it was logical to require its correct usage in official documents.

The Government did not deny that people in the applicant’s situation might have special wishes regarding the manner in which their surname was transcribed in their identity papers. However, such individual preferences always had to be weighed against the legitimate needs of society. In particular, in the Government’s submission, the use of a surname in an identity document could not be divorced from its use in social interaction as a whole, both official and unofficial.

In the instant case, entering “Mentzen” as the principal form of the applicant’s surname in her passport would mean imposing on society an incorrect use of language that was contrary to the phonetic and grammatical rules of Latvian. The Government provided some examples of misunderstandings that would be likely to arise if the surname concerned was used without an inflectional ending in a sentence: in most cases, it would be impossible to determine whether “Mentzen” was the subject or the object of the verb, and so the sentence might well prove unintelligible. Systematically permitting names to be entered in passports without endings

would encourage people to use the same form in conversation. Once such usage had become commonplace, it would open the door to the distortion of the language and its deterioration on a vast scale. In that connection, the Government argued that, even leaving to one side what would certainly be a negative reaction by the majority of the population, such an abrupt change in a four-century-old practice would be dangerous. In other words, 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 way of speaking when people were perfectly entitled to use, read and speak proper Latvian.

The Government therefore submitted that there had been a “pressing social need” in the present case to transcribe the applicant’s name. They were also satisfied that the impugned interference did not go beyond what had been strictly necessary to meet that need. In that connection, the Government noted the great linguistic diversity of the member States of the Council of Europe, which explained the diversity of the solutions that had been adopted for surnames and forenames. In the Government’s submission, the lack of common rules and principles on the subject was reflected by the small number of signatories to ICCS Convention no. 14 (see above), the list of which did not include Latvia. The Government considered that the exact reproduction, letter by letter, of a foreign name in another language was but one of a number of possible solutions. While it might satisfy some people, it would be detrimental to others. There was no universally accepted system and there might be a great many people who would prefer to hear the name pronounced correctly.

The Government went on to say that the phonetic transcription of the applicant’s surname had not necessarily nullified the original written form “Mentzen” or deprived it of legal effect. On the contrary, the regulations expressly permitted that form to be entered in the applicant’s passport. Since the introduction of Regulation no. 245, the original written form was entered on page 4. Similarly, paragraph 10 of Regulation no. 295 guaranteed the exact equivalence of the two written forms for legal purposes.

Lastly, while the Government did not deny that the applicant might be caused some inconvenience abroad, particularly if officials in the host State were not properly informed, they said that the risk of a misunderstanding could never be wholly excluded as it was impossible for everyone to be familiar with the transliteration rules existing in different countries. Incidentally, the Government noted that all the practical difficulties complained of by the applicant related to the period prior to the adoption of Regulation no. 245. They concluded, therefore, that all the problems were essentially attributable to the distance separating the two written forms (the adapted version and the original). However, the applicant was at liberty to obtain a new passport with the original version of her surname included on page 4, that is to say much closer physically to the adapted version.

According to information supplied by the Nationality and Migration Service, she had not yet availed herself of that right.

In summary, the Government considered that the Latvian authorities had chosen the least restrictive means of reconciling two objectives: on the one hand, satisfying a pressing social need and, on the other, reducing possible obstacles to the identification of the applicant and her family. A fair balance had therefore been struck, and the interference complied with the requirements of Article 8 § 2 of the Convention.

2. The applicant

The applicant agreed with the Government that the interference with her rights under Article 8 of the Convention was “in accordance with the law” within the meaning of the second paragraph of that Article. However, she contested the legitimacy of the aim pursued by that interference and its “necessity in a democratic society”.

Dealing, firstly, with the objective pursued by the measure, the applicant cited the Constitutional Court’s judgment of 21 December 2001 as evidence that the true aim pursued by the Latvian authorities was the protection of the official language, not the “protection of the rights of others”, as the Government had asserted. Such an aim did not constitute a “legitimate aim” for the purposes of Article 8 § 2 of the Convention.

As regards the proportionality of the interference, the applicant stressed that the practice of the Latvian authorities caused confusion between the two written forms of one and the same name and made it difficult for others to identify the person concerned. She concluded that the Government’s asserted aim, namely “the protection of the rights of others” would be better served by a practice diametrically opposed to the one being followed. In other words, in order to protect the rights of others, it would be better to retain the initial written form of the name.

As to the need to protect the official language, the applicant pointed out that, as with any other language, Latvian could not be isolated from its environment. It was inevitably influenced by other languages and everyday language contained a number of foreign words that were not necessarily intelligible to everyone or whose pronunciation was not apparent to all. In addition, the practice that had been adopted on the subject by the Latvian authorities was far from uniform.

Thus, for instance, since the re-establishment of Latvian independence in 1991, a large number of foreign nationals had settled in the country or come to stay there. Many of them had set up trading companies, whose names had been entered on the companies register as they stood, without any alteration to the written form (the applicant cited examples). The applicant also produced a copy of the vehicle registration document that had been delivered by the Latvian authorities to her husband and which bore the original written form of his name (“Ferdinand Carl Friedrich Mentzen”

instead of “Ferdinands Kārlis Frīdrihs Mencens”, as it should have been transcribed if the relevant rules had been followed). She added that the stage name of a young female singer from the Latvian musical scene was “Leen”, and it appeared in that form in all the newspapers and magazines without anyone having sought to transcribe it as “Līn(a)”. In a number of official documents produced by the applicant – including interministerial correspondence and a deportation order – the names of foreign nationals likewise appeared in their original form. She furnished a number of other concrete examples. She referred to *Diena*, Latvia’s largest daily newspaper, in which the names of foreign teams and sports clubs and foreign scout troops were reproduced in italics in their original written form. As to people’s names, their written form was practically always Latvianised, even if they had not been transcribed or transliterated in their identity papers (for example, “Jacques Chirac” was transcribed as “Žaks Širaks” and “Ari Fleischer” as “Ari Fleišers”). The applicant saw no reason why the same principle should not be applied to her name, which would thus remain in its original form in official documents and take the form “Mencena” in informal documents. Contrary to what the Government had said, the issue of the written form of foreign names in passports could be dealt with separately from the question of their form in everyday usage. Otherwise, one would have to accept that foreign names required special “legitimation” on the part of the authorities of the host State.

The applicant also contested the examples of misunderstandings that had been furnished by the Government, saying that indeclinable names already existed in Latvian and that a “reasonable” reader would always understand the meaning. Nor was the applicant persuaded by the trademarks example – her surname could quite easily be incorporated into a sentence by adding the word *kundze* (Mrs) or her forename, “Juta”, both of which could be declined. Lastly, her name could be written in italics, which was already standard practice with trademarks.

In short, the transcription rules accepted by the general population (and even, on occasion, by the public authorities) were far more liberal than the rules imposed by the regulations and the use of “incorrect” names was already a fact of modern life. The applicant said that no one disputed the importance of protecting the official language. However, a living language could not remain isolated from changes within society and in particular the massive influx of foreign terms. The applicant rejected the Government’s arguments based on sixteenth and seventeenth-century practices and the Forenames and Surnames (Written Form in Documents) Act. In her submission, there had since been fundamental changes in society both with regard to human rights and means of communication, so that a practice that had been valid at the beginning of the last century might be unduly restrictive today.

The applicant also drew the Court's attention to the fact that the provisions governing this sphere in the other two Baltic States were far more flexible. In Estonia, foreign names were reproduced as they were written in the original language. In Lithuania, it was possible to retain the original written form if desired. The applicant pointed out that of all the countries that used the Latin alphabet Latvia was the only one to use a method of strict phonetic transcription.

The applicant also stressed the interference with her family life. By taking her husband's surname, she had shown her desire to be identified with her husband's family. That was a "cultural, psychological and legal choice" and the change in the written form of her name undermined "the stability and certainty of [her] new identity". The applicant cited numerous problems and difficulties she was confronted with because of the difference in spelling between her and her husband's surnames.

The applicant did not accept the Government's arguments concerning the efforts made by the Latvian authorities to reduce the space separating the two written forms. The existence of two legally identical written forms could indicate the existence of two different people. The fact that the original written form was now to be found on page 4 rather than on page 14 did not change anything. It was still necessary to turn the page to find out that the original form existed, and a person unfamiliar with the system would have no reason to do so as all the basic information on the passport holder was to be found on the main page. It was for that reason that she had not exchanged her current passport for a passport complying with the new regulations.

The applicant lastly set out the practical difficulties which the different written forms of her name in various documents caused her. Documents issued by the German authorities usually contained the original version "Mentzen". By way of example, the applicant said that when she travelled abroad the authorities of other States sometimes expressed doubts about the equivalence of the two written forms of the same surname, thereby calling her personal identity into question. Admittedly, the misunderstandings were always corrected, but that necessitated additional explanations, which took time.

In the light of these considerations, the applicant said in conclusion that the interference of which she complained did not meet any "pressing social need". Consequently, it was not proportionate to any legitimate aim that was allegedly being pursued.

B. The Court's assessment

1. Whether Article 8 of the Convention is applicable and whether there has been interference with the guaranteed rights

(a) Whether Article 8 is applicable

Neither of the parties sought to question the applicability of Article 8 of the Convention in the instant case and the Court sees no reason to do so. It has itself recognised its applicability – in relation to both “private life” and “family life” – to disputes concerning the surnames and forenames of natural persons (see *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A no. 280-B, p. 28, § 24; *Stjerna v. Finland*, judgment of 25 November 1994, Series A no. 299-B, p. 60, § 37; and *Guillot v. France*, judgment of 24 October 1996, *Reports of Judgments and Decisions* 1996-V, pp. 1602-03, § 21; see also *Szokoloczy-Syllaba and Palffy de Erdoed Szokoloczy-Syllaba v. Switzerland* (dec.), no. 41843/98, 29 June 1999; *Bijleveld v. the Netherlands* (dec.), no. 42973/98, 27 April 2000; *Taieb known as Halimi v. France* (dec.), no. 50614/99, 20 March 2001; *G.M.B. and K.M. v. Switzerland* (dec.), no. 36797/97, 27 September 2001; *Šiškina and Šiškins v. Latvia* (dec.), no. 59727/00, 8 November 2001; and *Petersen v. Germany* (dec.), no. 31178/96, 6 December 2001). The subject matter of the application therefore comes within the scope of Article 8 of the Convention.

(b) Whether there has been interference

The Government did not dispute the applicant's allegation that the manner in which her married name had been entered in her Latvian passport amounted to interference with her right to respect for her private and family life. The Court notes that not all regulation of surnames and forenames will necessarily constitute such interference. While it is true that an obligation to change one's surname would definitely be regarded as interference (see *Stjerna*, cited above, pp. 60-61, § 38), in the instant case, the Court does not consider that the transcription of the applicant's surname can be taken to be a genuine change of name. In transcribing the surname “Mentzen” as “Mencena”, the Latvian authorities applied the statutory and regulatory provisions governing the use of surnames and forenames of foreign origin that are intended, on the one hand, to bring the written form of a surname in line with its pronunciation and, on the other, to adapt it to the particularities of Latvian grammar. The Court notes, in particular, that section 19(2) of the Official Language Act and paragraph 6 of Regulation no. 310 (see “Relevant domestic law” above) grant those concerned the right to have the original written form of their name, which remains identical in law to the adapted written form, entered in their passport. Indeed, the applicant availed

herself of that right. Consequently, the Court considers that the case concerns regulation of the use of the name, not a compulsory change of name. However, the implementation of such rules may also constitute interference with the right guaranteed by Article 8 of the Convention.

The Court notes that in entering the applicant's surname in her passport, the Latvian authorities transcribed the affricative consonant "tz" as "c", and gave the name an inflectional ending. It does not consider it necessary to examine these two changes separately. It would merely note that the visual difference between the adapted written form ("Mencena") and the original written form ("Mentzen") is sufficiently great to cause the ordinary observer to question whether it is one and the same name. The applicant explained that certain official documents relating to her, in particular those issued by the German authorities, bore the original version of her surname, so that she was sometimes obliged, both in Latvia and when abroad, to provide additional details about her identity and the equivalence of the two written forms. The Court consequently accepts the applicant's argument that that situation is liable to cause her problems and inconvenience in her social and professional life. In that connection, it reiterates that the right to respect for private life within the meaning of Article 8 of the Convention includes the right to enjoy relationships with other human beings and to lead a normal social life (see *Burghartz*, cited above, p. 28, § 24, and *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, pp. 33-34, § 29).

Likewise, the Court reiterates that when a couple choose to use the same name, that name assumes importance as a testimony to their reciprocal attachment and to the unity of the family (see, *mutatis mutandis*, *Szokoloczy-Syllaba and Palffy de Erdoed Szokoloczy-Syllaba*, cited above). As stated above, the difference between the written forms "Mentzen" and "Mencena" is sufficiently great as to give rise to doubts over the equivalence of the two versions. Consequently, when the applicant and her husband use their respective passports, which contain different written forms of their surname, their joint identification as a family unit may, in certain situations, become difficult.

In the light of the foregoing, the Court finds that the phonetic transcription and grammatical adaptation of the applicant's surname carried out to the detriment of the original spelling amounts to interference with her right to respect for her private and family life. Such interference will not infringe the Convention if it was "in accordance with the law", pursued one or more legitimate aims under paragraph 2 of Article 8 and was "necessary in a democratic society" to achieve that or those aims.

2. *Whether the interference was justified*

(a) **Whether the interference was “in accordance with the law”**

The parties were in agreement that the interference was “in accordance with the law”, namely section 19 of the Official Language Act and the relevant provisions of Regulations nos. 174, 295 and 310. The Court sees no reason to find otherwise.

(b) **Whether the interference pursued a legitimate aim**

As to the objectives pursued by the disputed measure, the Court notes that, in its judgment of 21 December 2001, the Latvian Constitutional Court justified the rule requiring the phonetic transliteration and grammatical adaptation of foreign names on various grounds, in particular by the need to preserve the integrity of the rules of grammar and the spelling traditions of Latvian, the official language of the State in the instant case. The Government essentially repeated the arguments that had been made by the Constitutional Court, while laying particular emphasis on the special role played by the Latvian State in preserving and promoting the Latvian language. However, since the protection of the national language or languages is not expressly mentioned in the text of Article 8 § 2 of the Convention, the Court must examine whether the reasons relied on by the Government correspond to one or more of the objectives set out in that provision.

The Court notes at the outset that linguistic freedom as such is not one of the rights and freedoms governed by the Convention (see, *mutatis mutandis*, *Podkolzina v. Latvia*, no. 46726/99, § 34, ECHR 2002-II; *Pahor v. Italy*, no. 19927/92, Commission decision of 29 June 1994, unreported; *Kozlovs v. Latvia* (dec.), no. 50835/99, 10 January 2002; and, among the older case-law, *Inhabitants of Leeuw-St-Pierre v. Belgium*, no. 2333/64, Commission decision of 16 December 1968, Collection of decisions of the European Commission of Human Rights, vol. 28, pp. 1-25). Admittedly, there is no watertight division separating linguistic policy from the field covered by the Convention, and a measure taken as part of such policy may come within one or more of the Convention provisions. However, the fact remains that, with the exception of the specific rights stated in Articles 5 § 2 and 6 § 3 (a) and (e), the Convention does not *per se* guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one’s choice. Consequently, provided it respects the rights protected by the Convention, each Contracting State is at liberty to impose and to regulate the use of its official language or languages in identity papers and other official documents.

The Court further notes that most of the Contracting States have chosen to accord one or more languages the status of official language or State language and have recorded them as such in their respective Constitutions. That being so, the Court acknowledges that the official language is, for these States, one of the fundamental constitutional values in the same way as the national territory, the organisational structure of the State and the national flag. A language is not in any sense an abstract value. It cannot be divorced from the way it is actually used by its speakers. Consequently, by making a language its official language, the State undertakes in principle to guarantee its citizens the right to use that language both to impart and to receive information without hindrance, not only in their private lives, but also in their dealings with the public authorities. In the Court's view, it is first and foremost from this perspective that measures intended to protect a given language must be considered. In other words, implicit in the notion of an official language is the existence of certain subjective rights for the speakers of that language.

The Government outlined the difficulties the Latvian language had faced during the fifty years of the Soviet regime. They emphasised in particular the Latvian authorities' continuing concerns regarding the preservation and development of the language. In the Government's view, the situation in which the Latvian language currently found itself justified the adoption and implementation of strict rules governing correct usage. In that connection, the Court reiterates that, by reason of their direct and continuous contact with the vital forces of their countries, the authorities, especially the national courts, are in principle in a better position than the international judge to give an opinion on the need for interference in such a special and sensitive area (see, *mutatis mutandis*, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 22, § 48; *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 84, ECHR 2000-VII; and *Fretté v. France*, no. 36515/97, § 41, ECHR 2002-I). That being so, it is in the first instance for the Latvian authorities – not the Court – to assess the true situation of the Latvian language in Latvia and to gauge the seriousness of the factors that could place it at risk. In its judgment of 21 December 2001, the Latvian Constitutional Court concluded that the situation of the Latvian language in the country's social relations as a whole was still relatively fragile and, consequently, that it was necessary to afford it additional protection. The Court could only call that assessment into question if it was arbitrary, which is manifestly not the case here.

In the light of the foregoing, the Court accepts that, as the Government argued, a "legitimate aim" existed in the present case. It therefore concludes that the interference in issue corresponded to at least one of the objectives set out in Article 8 § 2 of the Convention, namely "the protection of the rights and freedoms of others".

(c) Whether the interference was “necessary in a democratic society”

It remains to be examined whether the interference was “necessary in a democratic society”, that is to say proportionate to the legitimate aim pursued. In that connection, the Court refers to the principle in its settled case-law that, although the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective respect for private life. The boundaries between the State’s positive and negative obligations do not lend themselves to precise definition. However, in both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole (see, among many other authorities, *Stjerna*, cited above, pp. 60-61, § 38). In determining whether that balance has been struck, the Court must nevertheless take into account the margin of appreciation left to the State in the sphere concerned. The process whereby surnames and forenames are given, recognised and used is a domain in which national particularities are the strongest and in which there are virtually no points of convergence between the internal rules of the Contracting States. This domain reflects the great diversity between the member States of the Council of Europe. In each of these countries, the use of names is influenced by a multitude of factors of a historical, linguistic, religious and cultural nature, so that it is extremely difficult, if not impossible, to find a common denominator. Consequently, the margin of appreciation which the State authorities enjoy in this sphere is particularly wide (see *Stjerna*, cited above, p. 61, § 39, and *G.M.B. and K.M. v. Switzerland*, cited above).

In the Court’s view, the same applies to the entry of surnames and forenames of foreign origin in official documents. In that connection, the Court notes that only a few States have ratified ICCS Convention no. 14, a convention specifically intended to introduce a degree of uniformity in this sphere (see “International law” above). Moreover, the existence of this convention cannot be regarded as affording a final solution to the problem because its practical application can give rise to difficulties (see, in particular, the judgment of the European Court of Justice in *Christos Konstantinidis*, cited in “Community law” above). In any event, when the competent authorities of a State find themselves under an obligation to transcribe in an identity or other official document the name of a person from a country whose language uses a different form of writing to that used in the document they are required to draw up, the difference between the alphabets may make transliteration necessary. Various methods may be used to effect such transliteration while still pursuing the same objective of integrating the bearer of the name into the entire range of social relations in the host country. The most common method, however, is phonetic transcription, the aim of which is to reproduce as faithfully as possible the pronunciation of the name concerned in the language of origin.

This rule does not apply when the original form of the surname is written in the same alphabet as that in which the document is to be drawn up. The Court observes that the vast majority of the member States of the Council of Europe whose official language or languages use the Latin alphabet have opted for a simple literal reproduction of the name as it is written in the language of origin, even if the difference in phonetic value ascribed to certain characters in the two languages is liable to give rise to difficulties and misunderstandings over pronunciation. In other words, in such cases it is the written form and not the pronunciation of the name that takes precedence. This approach, which is inspired by the principle of legal certainty, is, moreover, reflected in Article 2 of ICCS Convention no. 14.

In Latvia, on the other hand, foreign surnames are subject to phonetic transcription even if their original form is written in Latin characters. In addition, most surnames have an inflectional ending. In the instant case, the Latvian Constitutional Court acknowledged that, in view of the grammatical particularities of the Latvian language, the adaptation of the written form of foreign names resulted from the need to ensure the correct use of the language in official documents. It noted, *inter alia*: “in Latvian, a foreign surname cannot be included in a sentence ... unless it is written in the way it is pronounced and has an ending.” The Court notes that while this adaptation enables people with a command of Latvian to pronounce the name concerned correctly and to include it effortlessly in phrases of everyday language, it inevitably entails an alteration to the written form.

The Court reiterates that in cases arising from individual applications its task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (see, among many other authorities, *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no. 130, pp. 27-28, § 54; *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, pp. 30-31, § 55; and *Amann v. Switzerland [GC]*, no. 27798/95, § 88, ECHR 2000-II). Likewise, the fact that a country finds itself in an isolated position as regards one aspect of its legislation does not necessarily imply that that aspect offends the Convention, particularly in a field that is so closely bound up with the cultural and historical traditions of each society (see, *mutatis mutandis*, *F. v. Switzerland*, judgment of 18 December 1987, Series A no. 128, pp. 16-17, § 33). Consequently, the Court considers that it has no jurisdiction to adjudicate on the Latvian system of transcription of surnames as such. Its sole task is to determine whether the domestic authorities’ adaptation of the written form of the applicant’s surname in the instant case is capable of amounting to an infringement of her rights guaranteed by Article 8 of the Convention (see *Stjerna*, cited above, p. 61, § 39; *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55; and *The*

former King of Greece and Others v. Greece, no. 25701/94, Commission decision of 21 April 1998, unreported).

In the present case, the Court recognises that, as the applicant is obliged to use the written form “Mencena” in official documents in Latvia, she is exposed to a number of practical problems and difficulties. However, the explanations she has given indicate that these difficulties are not caused by the new written form as such (this would be the case, for instance, if the name so spelt had a vulgar or ridiculous meaning), but rather from the difference between the adapted version and the original version of her surname. The Court notes, however, that the Latvian authorities were conscious of this problem when they regulated the phonetic transcription of foreign names. In order to remedy it, they firstly confirmed that the two versions – original and adapted – of the name were equivalent in law (see paragraph 6 of Regulation no. 174 in “Relevant domestic law” above). Secondly, they made it possible for the bearer of the surname to have the original written form entered in his or her passport. The Court notes, in particular, that in its judgment of 21 December 2001, the Latvian Constitutional Court acknowledged that the steps initially taken by the national authorities on this second point were insufficient. In that connection, it ruled that page 14 of the passport, where the original version of the name was inserted, was too inconspicuous a location in view of the fact that the adapted written form was entered on the main page. The distance separating the two entries was, therefore, liable to make the passport holder’s identification difficult. Regulation no. 245, which was adopted in the wake of that judgment and took effect on 1 July 2002, seeks to remedy the aforementioned defect by reducing the distance between the two versions. The original version of the name is now entered on page 4, immediately after the main page, thus enabling officials to make a visual comparison of both written forms of the surname and to satisfy themselves of their equivalence with greater certainty and speed.

The Court further notes that paragraph 15 of the aforementioned Regulation no. 245 allows any interested party to obtain a new Latvian passport even if his or her current passport is still valid. That being so, it sees no genuine objective obstacle preventing the applicant from exchanging her current passport for identity papers that satisfy the requirements set out in the new regulation. The Court does not dispute that closing the gap between the two versions of the surname cannot suffice to avoid all the difficulties the applicant has mentioned. Furthermore, 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 (see, *mutatis mutandis*, *Sheffield and Horsham v. the United Kingdom*, judgment of 30 July 1998, *Reports* 1998-V, p. 2029, § 60, and *Christine Goodwin v. the United Kingdom* [GC], no 28957/95, §§ 74-75, ECHR 2002-VI) in order to

be able to take adequate measures if necessary. However, in the present case, the Court is not persuaded that these difficulties are serious enough to amount to disproportionate interference with private or family life. In particular, there is nothing in the case file to show that the use of the written form “Mencena” has prevented the applicant from exercising all her political, economic and social rights recognised by the Latvian Constitution and law, including the right to leave Latvia and to return there. Indeed, this was noted by the Latvian Constitutional Court in its judgment of 21 December 2001. Similarly, the Court notes that the applicant has never been refused permission to enter or stay in any foreign State, either alone or with her husband, as a result of the difference between the two written forms of her name. As to the need to supply foreign authorities with additional details regarding the difference in spelling, the Court does not consider it to be sufficiently serious as to render the interference disproportionate for the purposes of Article 8 § 2 of the Convention. In any event, this is a domain in which it will not be possible to avoid the risk of misunderstandings until such time as travel documents and identity papers are made uniform the world over.

In short, the Court considers that the Latvian authorities have not overstepped the margin of appreciation they are afforded in this sphere. It follows that the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously,

Declares the application inadmissible.