



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, December 21, 2001

JUDGMENT In the name of the Republic of Latvia

in case No. 2001-04-0103

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, the justices Ilma Čepāne, Romāns Apsītis, Juris Jelāgins, Andrejs Lepse, Ilze Skultāne and Anita Ušacka, with the secretary of the Court session Egija Freimane

in the presence of Jautrīte Briede – the representative of the submitter of the constitutional claim Juta Mencena

and the representatives of the institutions that issued the act, which is challenged, namely- the Head of the Saeima Legal Bureau Gunārs Kušņis and the representative of the Cabinet of Ministers Solvita Harbaceviča – the Vice State Secretary of the Ministry of Justice,

under Article 85 set by the Satversme (Constitution) as well as Items 1 and 3 of Article 16 and Article 17 (the first part, Item 11) of the Constitutional Court Law,

in a public hearing in Riga, on December 21, 2001 reviewed the case

”On Compliance of Article 19 of the Language Law and the Cabinet of Ministers August 22, 2000 Regulations No. 295 ”Regulations on Spelling and Identification of Names and Surnames” with Articles 96 and 116 of the Satversme (Constitution) ””.

The Constitutional Court

established:

On July 13, 2001 Juta Mencena (henceforth – the applicant) submitted a constitutional claim at the Constitutional Court, because after joining in matrimony with the citizen of the German Federative Republic *Ferdinand Carl Friedrich Mentzen* the Department of Citizenship and Migration Affairs issued the passport spelling her surname *Mencena*. On page 14 it was indicated in English that the original form of the surname was *Mentzen*.

Before that on December 3, 1999, the applicant, holding that the Latvian version of her surname noticeably differs from her husband's surname, which could create additional problems in proving the personal identity, addressed a claim on illegal activity of an official to the Riga Centre District Court.

On March 23, 2000 the Riga Centre District Court took the decision to dismiss the claim because the applicant's passport had been drawn up in conformity with the requirements of the normative acts. The original German surname has been reproduced in compliance with the orthographic norms of the Latvian literary language as well as in conformity with the regulations on reproduction of German proper nouns as near as possible to the German pronunciation of the surname *Mencena*. The Court substantiated its viewpoint with the State Language Advice Department December 21, 1999 reference No. a-016447 on Latvian spelling of the surname *Mentzen*.

On April 12, 2000 the applicant submitted a claim at the Riga Regional Court.

On October 24, 2000 the Riga Regional Court panel, acknowledging that the court of the first instance had motivated its conclusions on the actual circumstances of the case and application of material legal norms in accordance with the legal requirements, dismissed the applicant's claim on illegal activity of the official of the Department of Citizenship and Migration.

On November 30, 2000 the cassation claim on the appellate court decision was submitted to the Civil Department of the Supreme Court Senate.

On January 31, 2001 the cassation court reached the decision that the appellate court had had ground for declaring that the private and family life of the applicant was not violated. As the cassation claim did not incorporate any vitally new arguments, on the basis of which the appellate court decision could be revalued, the case was dismissed.

The applicant in her claim requests the Constitutional Court to declare Article 19 of the State Language Law (henceforth- the Language law) and the

Cabinet of Ministers August 22, 2000 Regulations No. 295 "On Spelling and Identification of Surnames" (henceforth- Regulations No. 295) as unbecomable with Articles 96 and 116 of the Satversme (Constitution) of the Republic of Latvia.

The applicant holds, that the Language Law and Regulations No. 295 on the basis of which the entry was made in her passport, violates the fundamental rights of an individual, established by Articles 96 and 116 of the Satversme (Constitution). Article 96 of the Satversme (Constitution) determines that everyone has the right to the inviolability of a private life. To her mind by reproducing the surname, acquired after marriage, in Latvian her right to private life has been violated. The applicant refers also to Judgments of the European Court of Human rights (cases *Stjerna v. Finland /1994/* and *Burghartz v. Switzerland /1994/*), which acknowledge that the name of the person is a component of private life.

In the application it is stressed that spelling of the surname, which does not comply with the original form of it, limits the private life of the claimant. For example, the German officials had not taken into consideration the entry on page 14, therefore difficulties with her registration of residence had arisen.

A reference to Article 116 of the Satversme (Constitution) was made in the claim. The applicant points out that the right to the inviolability of private life may be limited only in order to protect the rights of other people, a democratic state system, and the safety of society, welfare and morals. The applicant holds that reproduction of a surname in Latvian cannot be connected with the above objectives, therefore this limitation of private life may not be considered as legitimate.

Besides the applicant states that the limitation is not proportional, the violation of her rights being larger than the benefit the state gains.

On October 4, 2001 the claim to the Constitutional Court was supplemented with a request to also declare the Cabinet of Ministers October 24, 1995 Regulations No. 310 "On the Citizen of Latvia Passports" (henceforth – Regulations No. 310), regulating spelling of names and surnames in the passports, as unbecomable with Articles 96 and 116 of the Satversme (Constitution).

The Saeima, in its written reply declares that the Language Law complies with Articles 96 and 116 of the Satversme (Constitution).

The Saeima has pointed out that the challenged Article of the Law consists of three parts. The first part states that there exist traditions of reproducing personal names in Latvian and determines that personal names shall be spelled in accordance with the norms of literary language norms. Existence of Latvian

literary language traditions and norms cannot contradict the Satversme (Constitution).

To their opinion from the second part of Article 19 it follows that the original form of foreign personal name may differ from the Latvian language norms. In this case, these names shall be spelled in accordance with the Latvian language norms currently in force. Besides, the above demand refers only to official documents, confirming the personality - like the passport and the birth certificate, issued in Latvia. It helps to reproduce names of persons under a unified system. The interest of the society to retain the system is well-grounded, as the will of one person not to attribute the norms of spelling currently in force to their names may serve as a reason for other persons to require the same. Therefore spelling of names is not the private affair of a person but concerns the interests of the whole society.

Besides the second part of Article 19 offers a possibility of indicating the original form of personal names” in a person’s passport or birth certificate, in addition to the person’s name and surname”. There is no reference to a specific way how to indicate it in the Law.

To regulate spelling and usage of foreign personal names in Latvian, the third part of the Article delegates the Cabinet of Ministers to establish corresponding regulations. The above delegation may not be regarded as being at variance with the norms of higher legal force.

In its reply the Saeima states that Article 116 of the Satversme (Constitution) and the second part of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms permit limitations of the inviolability of private life to protect interests of other people. Using of personal names concerns the public interests; therefore a unified system of spelling and usage of personal names is needed. Insurance of identification of personal names and thus identification of persons is in the interests of the society.

The Saeima stresses that the particular limitation shall be considered as socially needed and the benefit, gained by the society in case the reproduction of personal names remains as it is today, is much larger than the limitation of a person’s rights.

The Cabinet of Ministers in its written reply points out that Regulations No.295 have been passed in accordance with the Language Law. The Regulations regulate one of the two possible in linguistics principles of reproduction of personal names of other languages – transcription, i.e. names are reproduced according to their pronunciation and not according to their spelling (transliteration). States usually choose one of the two principles to reproduce foreign personal names.

It is admitted that difficulties may arise in using any of the principles. In this particular case the difficulties result from the place (page) the original form of the personal name has been entered and not from the principle of reproduction.

The Cabinet of Ministers explains that Regulations No.295 envisages only the procedure of reproducing and usage of the personal name and surname as well as the way of reproducing and identifying it in documents.

In the written reply the Cabinet of Ministers stresses that Regulations No. 295 limit person's rights to protect the democratic state system and essential rights of other people. Taking into consideration the fact that the Latvian language has been fixed as the State language by the Satversme (Constitution), as well as specific features of the historic development of Latvia, any limitation of the usage of Latvian in the territory of our State should be regarded as the limitation of the State democratic system. The Cabinet of Ministers expresses the viewpoint that Regulations No. 295 are needed to insure the right of the residents of Latvia to freely use Latvian in the whole territory of the Republic.

The right of the society to use correct, perfect Latvian results from Article 4 of the Satversme (Constitution). The above constitutional norm is the legal basis of using the Latvian language in the documents, issued in the Republic of Latvia.

In the written reply of the Cabinet of Ministers it is pointed out that, when evaluating proportionality of the limitation one should take into consideration the fact in what a way and in what manner the challenged norms may create difficulties for a person. As the Regulations envisage the possibility of entering into passport both – the reproduced form of the personal name and the original form of the name and surname, then any possible misunderstanding may be avoided. Besides, incompetence of separate officials and ungrounded ignorance of the person's name entered in page 14 of the passport (which is a document of identification), is not a good enough argument to establish violation of the principle of proportionality.

The Cabinet of Ministers expresses a viewpoint that Item 6 of Regulations No. 310, envisaging that personal name and surname in its original form shall be entered in the passport page under the heading "special notes" is not at variation with the Satversme (Constitution), as such a violation of the private life is proportional with the protected interests of the society and state.

In the written reply it is pointed out that – in accordance with general practice - to determine the space in the passport i.e. "special notes" for entering the original form of the person's name is within the competence of the Cabinet of Ministers. The latter has specified the guiding lines established by the

legislator. The reason of establishing the norm like the above is connected with the International Convention on Civil Aviation (henceforth – the Convention), which the Supreme Council of the Republic of Latvia ratified on June 3, 1992. In compliance with the Convention and taking into consideration the document "Machine readable traveling documents" (henceforth – Document 9303), the state undertakes the task of ensuring standardization of personal data entered into passports. Document 9303 incorporates the demands referring to travelers' documents, elaborated by the International civil aviation organization – ICAO. The above document envisages that person's name in the visually examining zone of the passport shall be fixed in the spelling of the country, which has issued the document. It does not envisage entering the original form in the same zone. Therefore the passport page under the heading "special notes" has been chosen as the only potential place for entering the original name.

By determining the place in the passport for entering the name and surname in its original form, the Cabinet of Ministers has wanted first of all to protect the right of a person to private life, as any official has to take into account all the passport data, including those, which are entered in the page for "special notes", like confirmation of the fact of registration of person's marriage and registration of residence. Secondly, when establishing that the original form of person's name and surname shall be entered under the heading "special notes", the Cabinet of Ministers has taken into consideration international standards, technical feasibilities and the necessity of avoiding miscomprehension.

In the written reply it is stressed that the Republic of Latvia is neither materially nor technically able to enter the original form of person's surname into the data page of the passport. To their mind such a demand is not proportional, because –as concerns legal consequences – entering the original form of the surname under the heading "special notes" does not make any difference. The Cabinet of Ministers acknowledges that the gain of the person, whose surname is entered in the data page of the passport, would be more emotional than legal.

Besides it is pointed out that new citizen passports have been elaborated and commissioned. In those passports the original form of the person's name and surname will be entered into page 5, i.e., into the very next page after the data page. Thus the emotional attitude of a person to spelling of the original name and surname as well as its placement will be taken into consideration.

The conclusion of the **expert** on reproduction of foreign personal names was asked. The professor of the Latvian University Ina Druviete and the head of the Consulting Department of the State Language Centre Melita Stengrevica were invited as experts.

Both experts acknowledge that proper nouns of foreign origin have traditionally been reproduced as near as possible to their pronunciation in the original language and by using the letters of Roman Latvian alphabet in conformity with the orthographic norms of the given period. Usage of foreign personal names in their original form shall be considered as interference into the system of the Latvian language.

In its turn the declinability of Latvian endings is the basis of the Latvian grammatical system. Without word endings the Latvian language is unthinkable. The endings indicate the gender, number and the word function in a sentence. If forms without endings were used, the syntax of the Latvian language would be ruined and particular texts rendered unintelligible.

The experts hold that introduction of changes in spelling of personal names in the documents shall have far-reaching consequences in all the sectors of usage of the Latvian language. Spelling corresponding to the pronunciation is deeper-rooted in the Latvian language than in any other Roman alphabet spelling languages.

Besides, if the forms without endings were introduced, it would really endanger the quality of the Latvian language and also its functions in the Latvian society. The experts are of the viewpoint that observance of traditional and codified norms, conformable with the system of the Latvian language also in the sector of spelling personal names, is an integral part of the status of the state language.

At the Court session the representative of the applicant upheld the claim and pointed out that in the data page of the passport only the Latvian form of the surname was fixed and there was no reference that it could have another-the original form. In its turn the entry on page 14 was only in English.

The representative of the applicant stressed that passport was the document, confirming the identity of the person and not the document, just reproducing the pronunciation of the particular name in Latvian. Besides, passports are used not only in Latvia; passport is a document, necessary for traveling.

At the Court session J.Briede acknowledged that usage of personal names concerned the interests of the whole society. However, protection of the rights of a group of individuals, by easing the pronunciation of personal names come into conflict with the rights of other individuals, e.g., when identifying the particular person.

The representative of the applicant questioned the stability of the Latvian language traditions. She pointed out that there were exceptional cases when the original form of the person's name was used, for example, when handing out the registration certificate of the means of transport to a citizen of a foreign

country. Besides she expressed the viewpoint that the protection of the above language interests was hard to explain in the world.

At the Court session the representative of the Saeima Gunārs Kusiņš asked to dismiss that part of the claim, which referred to the Language Law.

In addition to the viewpoint expressed in the Saeima written reply he stated that the formulations of the Language Law "in conformity with the Latvian language traditions" and "in accordance with the Latvian language norms currently in force" are flexible. Therefore even if the traditions and language norms change the law should not be amended.

When speaking of delegating the issue of regulation of it in detail to the Cabinet of Ministers, G.Kusiņš stressed that unified procedure, i.e. a specific unified system of spelling personal names was necessary in the state not to permit arbitrariness. To his mind one should take into consideration the fact that the traditions and norms of the Latvian language may develop. By maintaining the unified approach in reproduction of personal names, the unified system guarantees the interests of society.

The Saeima representative stressed that an entry in the passport identifies the particular person, however the document does not certify belonging of the person to a family.

At the Court session the representative of the Cabinet of Ministers S.Harbaceviča additionally pointed out that, when evaluating the legitimacy and proportionality of limitation of private life, one should take into consideration the role of the Latvian language in Latvia. The objective of the limitation is to enlarge the influence of the state language. The state language also helps to further the integration of society. The state language shall be considered as an integral part of a democratic state. Therefore the disputed limitation of private life should be regarded as legitimate.

Besides, when speaking of DOC 9303, S.Harbaceviča pointed out that it was of a recommending character.

The witness Andra Taliņa explained that her the surname, acquired after her marriage, had also been reproduced in her passport. Just in one year after her marriage complications because of the reproduced surname had arisen when receiving the mailed parcels. It had taken her several days to get them. Complications had arisen also at the elections: the office worker had expressed failure of understanding the original form of her surname, entered in English on page 14 of the passport. Even though the misunderstanding had been clarified, it had caused her unpleasant moments. At international airports, especially in London the necessity of explanations has always arisen. The above misunderstandings cause unpleasant emotions. The witness considers

reproduction of the surname to be an offense and not only to her but to her family as well.

The psychologist Baiba Martinsone, who was invited to the Court session by the representative of the applicant, explained that the name of a person is closely connected with the core of the personality of that person. Identity of a person takes shape internally and it cannot be forced on. If the name of a person is doubted, he/she experiences the feeling that his/her identity is also doubted. B.Martinsone expressed the viewpoint that the name of the person shall be fixed as it is and not in the way for everybody to pronounce it.

The invited person – the judge of the Land Registry Aija Biezā at the Court session acknowledged that in practice regulations on reproduction of personal names were applied inconsequently. Problems usually arise when reproducing names and surnames of foreign persons (i.e. citizens of foreign countries).

Another person, invited to the Court session - the director of the Registry Department Ārija Iklāva pointed out that during the last three years 1024 persons had married foreign citizens. When reproducing personal names no serious problems had arisen because the employees of the registry offices respect all the sections of the passport.

Andris Krēķis – the head of the Department of Citizenship and Migration Passport centre, who was also invited to the Court session, indicated that the applicant had obtained the surname *Mentzen* under the German not Latvian law. And Latvia acknowledges marriage certificates, issued abroad. She had been "made" *Mencena* by the operator of the department of Citizenship and Migration when entering her data into the Residents' Register. Unfortunately this form of the surname varies from the entry in the document, i.e. – the marriage certificate.

A.Krēķis stressed that passports were filled in on the basis of the Residents' Register data. It means that only the data fixed in the Residents' Register may be entered in passports.

He admitted that the applicant might experience problems also with the new machine readable page of the citizen's passport as every letter of the surname shall be moved to the machine readable page of the passport data page. The standard of the International Civil Aviation Organization on machine readable passports has been elaborated with an objective of making interstate connections easier and not more complicated. However the full name (name and surname) of the applicant, reproduced in the passport machine readable zone, will differ from her husband's name in the above zone. A.Krēķis prognosticated that the above difference of the applicant's personal name in her documents (passport, visa, residence permit) could cause rather serious problems in Germany. He admitted that the present normative basis with regard

to the citizens does not encourage retaining of their rights and respect in foreign countries.

The head of the Passport Department acknowledged that the German officials might have regarded the entry on page 14 of the passport not as the surname but as a "story" about the way of appearance of this or that surname in the passport data page.

However he also pointed out that Latvia as a Member State of the Convention experiences the right of addressing the International Civil Aviation Organization and expressing proposals on spelling of personal names in passports. The choice of whether to enter the original form of the name or the reproduced Latvian form is left to the Member State itself. At the same time he did not deny that it was technically possible to enter a not on the original form of the foreign personal name in the new machine readable passport data page.

In addition to the viewpoint expressed at the Court session, the expert I.Druviete stressed that linguistic human rights are being rapidly developed in the world and in accordance with these, the statement that the surname is an integral part of private rights is a questionable one. She expressed the viewpoint that surname existed not for the convenience of a person but for the convenience of the society. Therefore in a definite society the surname is chosen and reproduced under society rules. A person may be better identified by name and not surname as during the lifetime the surname may be changed several times. Therefore the fact, whether the psychological vulnerability of one holder of a surname is more important than the feelings of several millions of the language bearers shall be appraised. No individual has the right of forcing the society to use unnatural forms, for example zero inflection forms. It is unconformable with the fundamental principles of democracy.

I.Druviete acknowledged that, taking into consideration the inordinarity of the situation, Latvia had to find some means of preserving the unique Latvian language, at the same time observing principles understandable to Europe.

She stressed that there were no trifles in the language system. If the original form of the newly acquired surname was entered in the documents of the persons married to foreign citizens, a precedent would arise, leaving an impact on place names, the spheres of using other personal names and even common names. If the precedent is permitted in one, two or three cases, no one will be able to draw a distinction line and preclude the practice like the above. As the result the erosion of the language system will start and that would susceptibly harm the process of development of the language and the status of the Latvian language.

Besides I.Druviete expressed the viewpoint that the worry about the identity of the family was a little bit exaggerated because there were quite a lot of cases

when the husband and the wife had different surnames. Not the passport but the marriage certificate is the document, which proves the unity of a family.

At the Court session expert M.Stengrevica agreed with the viewpoint expressed by I.Druviete and stressed that by introducing unconformable forms into the language, the main and most essential objective of the language – to serve as the means of communication was violated. She also admitted that the so-called transcriptional problem of the language was global, because there was no Roman alphabet, which could include all the sounds, existing in the languages of the world.

The Constitutional Court, evaluating conformity of the challenged acts with the Constitution

established:

1. Article 96 of the Satversme determines the right of everyone to the inviolability of private life. The name of a person distinguishes him/her from other people. In its turn, the surname is a family name, which is inherited by generations and indicates family links. The name and surname insure the existence of a person as an independent part of the society. On the one hand person's name and surname is closely linked with the sense of his/her identity, thus – with his/her private and family life. On the other hand – not only the holders use the name and surname. Person's name and surname have an important social function – they allow identifying the person. Therefore it is of importance to the society to be sure that neither the individual nor the state institutions will arbitrarily change the obtained name and the surname. The system of surnames has been introduced just for the convenience of the society. The European Court of Human Rights in its judgments has also acknowledged the connection of the person's name with private life and the fact that the name is a form of identifying the person, which establishes the connection of the person with a certain family. To a certain extent it also concerns the right of developing relations with the others (see *Stjerna v. Finland/1994/*, *Burghartz v.Switzerland/1994/*).

As the person's name and surname are a consistent part of private life of that person, they shall be protected by Article 86 of the Satversme.

2. The applicant acquired the surname *Mentzen* in Germany, after her marriage with a German citizen. The State of Latvia when issuing a new passport to the applicant – the citizen of Latvia- the surname, acquired after her marriage was reproduced as *Mencena*. The surname has been reproduced in compliance with the Language Law, determining that "personal names shall be reproduced in accordance

with the traditions of the Latvian language and shall be spelled in accordance with the norms of literary language currently in force”. As the spelling of the reproduced surname differs from the spelling of its original form, the surname entered into the passport of the applicant differs from the spelling of her husband’s surname and the spelling of their shared surname entered in their marriage certificate.

The Constitutional Court agrees to the applicant’s statement that reproduction of the surname has offended her. The fact that the spelling of the reproduced surname differs from that of her husband’s surname has caused a psychological discomfort and created social inconveniences to her. Complications in her everyday life have sprung up as she has had to give additional explanations on her ties with the spouse. Uncertainties are averted but it takes some time.

Getting married is one of the ways how a person may acquire another surname. From the moment the newly acquired surname has been entered in the marriage certificate the person obtains both the right and the duty to use this surname to identify her. One of the basic social functions of the name and surname is to guarantee possibilities of identifying the person and to determine the ties of the bearer of the name with the family.

Taking into account both – the applicant’s psychological attitude to the reproduced surname and complications connected with difficulties of determining her ties with the family, which often arise in foreign countries, as well as taking into consideration the fact that stability of one’s surname concerns not only the private life of a person but also the interests of the society, **the rule on reproduction of a foreign personal name (surname) in accordance with the traditions of the Latvian language and spelling in accordance with the norms of Latvian literary language in passports issued in Latvia shall be considered as limitation of one’s private life.**

3. Article 116 of the Satversme (Constitution) determines that the right to inviolability of a private life may be limited in those cases prescribed by law in order to protect the rights of other people, a democratic state system, and the safety of society, welfare and morals.

3.1. The incorporated into the Language Law condition that ”personal names shall be reproduced in accordance with the traditions of the Latvian language and shall be spelled in accordance with the norms of the Latvian language currently in force”, is specified in Regulations No. 295. The above Regulations envisage that ”names and surnames of foreign origin shall be reproduced in Latvian (i.e. are spelled using Latvian letters and sounds) as near as possible to their pronunciation and in accordance with the law on reproduction of foreign proper nouns”.

Thus the authorized Latvian institution, when issuing the passport with the reproduced surname *Mencena* to the applicant has acted in compliance with the Language Law and Regulations No. 295.

Consequently the limitation of the applicant's private life has been determined by the law and specified with the Cabinet of Ministers Regulations.

3.2. Ungrounded is the applicant's viewpoint that reproduction of her surname in Latvian does not achieve any of the mentioned legitimate objectives. Personal name is one of the elements of language and determining in compliance with what regulations it shall be used, influences the whole language system. In the material of the case it can be seen that the applicant in matter of fact challenges the very principle of reproduction of foreign personal names. Therefore, when evaluating if the limitation of the private life has a legitimate objective, the role of the Latvian language in Latvia has to be taken into consideration.

Article 4 of the Satversme (Constitution) , which determines that the state language within the Republic of Latvia is Latvian, fixes its constitutional status. And the constitutional status of the state language strengthens the legal justification of usage of it in the documents, issued in the Republic of Latvia. Taking into consideration the fact that the Latvian citizen passport is an official document, not only identifying the person but also confirming the continuous legal ties between the person and the state, person's name and surname shall be written in the state language.

By Article 4 of the Satversme (Constitution) the right of using both forms of Latvian- the oral and the written one - in communication is legally fixed. The Constitutional Court agrees to the viewpoint of the expert I.Druviete, that the person's surname is used not only by the holder but the society as well; therefore the surname spelling shall be regulated just for the convenience of the society and other people.

Taking into account the historical features and the fact that the numerical structure of the Latvians in the state territory has decreased during the 20th. century and in the biggest cities, including Riga Latvians are a minority (*see The Statistic Year Book of Latvia, 2001. Riga, CSP, 2001, p. 41*) and that the Latvian language only recently has regained its status as the state language, the necessity of protecting the state language and strengthening its usage is closely connected with the state of Latvia democratic system.

Taking into consideration that the Latvian language as the state language has been fixed in the Satversme (Constitution) and the fact that in the era of globalization Latvia is the only place in the world where the existence and development of the Latvian language and together with it the existence of the

main nation may be guaranteed. Limitation of the usage sectors of the Latvian language as the state language in the state territory shall be regarded as the threat to the democratic system.

The Constitutional Court of Lithuania has also declared that the state language maintains the identity of the nation, unites it and ensures manifestation of the national sovereignty and indivisibility of the nation (*see the Judgment in case No. 14/98 "On writing of names and family names in passports of citizens of the Republic of Lithuania"/1999/*).

Thus - the private life of the applicant is limited to protect the right of other inhabitants of Latvia to use the Latvian language freely in the entire territory and to protect the democratic state system.

Hence: limitation of the applicant's private life has a legitimate objective.

4. To evaluate the necessity of the established limitation, one has to verify whether the interference of the state in the applicant's private life is proportionate to the legitimate objectives.

4.1. Inviolability of a person's private life is one of the fundamental values of a democratic society. However, there are limits even to the right to inviolability of a private life.

The Constitutional Court has no doubt that spelling of personal names in documents has a direct influence on other sectors of language usage, because they are closely connected. If it was allowed to spell foreign personal names only in their original form in the documents, the possibility of enlarging the sector of the above usage would be quite natural as personal names are used in different kinds of texts. It is not possible to isolate the spelling of person's names (surnames) in documents from the other sectors of language. That would really threaten the quality of the Latvian language and consequently- the functions of the Latvian language in the society of Latvia.

From the case material it can be seen that the limitation of the private life has not denied either the applicant or the witness to realize other rights, like crossing the borders of their state and other states, making use of their right of vote, receiving mail etc. The discomfort the applicant has experienced because of the reproduced in the passport surname cannot be regarded as the sufficient reason not to apply the Regulations following from the Language Law also to her.

The Constitutional Court holds that the threat to functioning of the Latvian language as a unified system if the spelling of foreign personal

names in the documents only in their original form was allowed, is much greater than the discomfort a person may experience in case the surname in the passport is reproduced according to the traditions of the Latvian language.

Under the above circumstances functioning of the Latvian language as a unified system is a social necessity in Latvia and not a voluntary caprice of the state power.

In certain cases reproduction of the surname may complicate the possibilities of identifying a person or establishing ties of the holder with the family (spouse), however in the interests of protecting the status of the Latvian language as the state language, and consequently the insurance of the democratic state system, it is justified.

4.2. Ungrounded is the viewpoint of the applicant that the surname, acquired in her marriage, has been altered. **Reproduction** of the personal name is not its translation into Latvian (it is not Latvianization) but only its adjustment to the specific features of the Latvian grammar.

There are quite a lot of widely used written language systems in the world. Their differences objectively determine that preservation of the original when changing one written language system to another one is not possible. Because of differences in alphabets absolute conformity with the original, even when speaking only of the countries using the Roman alphabet, cannot be achieved. From the very beginnings of the existence of the written language, reproduction of foreign proper nouns into Latvian has traditionally been done in accordance with their original pronunciation and not spelling. In Regulations No.295 the above principle of reproducing foreign personal names in accordance with their transcription or reproduction of the name in accordance with its original pronunciation has been legally fixed.

Both the Language Law and Regulations No.295 refer to the language norms. In conformity with the conclusion of the experts the grammatical foundation of the Latvian language is its flexible endings. The endings indicate the gender of the common names and proper nouns, the singular or the plural as well as the function of the word in the sentence. The flexible ending, added to a person's name, indicates the gender of the bearer of the name. In many Indo-European languages (like English, German, French) personal names either have no ending or the surnames of women and men do not differ in form. Therefore it is possible to incorporate into a sentence the foreign personal name in their original form in those languages and that does not influence the grammar system of the language. Whereas in Latvian the foreign personal name may be included into a sentence and understood only if it is spelled according to its pronunciation and if an

ending is added to it. Thus the traditions of reproduction of foreign personal names are based on the specific features of Latvian grammar.

Therefore one cannot agree with the statement of the applicant that violation of her rights is greater than the gain of the state. By limitation of a private life of the person the state furthers the stability of the Latvian language system. Under the particular historical circumstances observance of adequate, traditional and codified norms in any sector (including the documents) using and spelling personal names is an integral part of realization of the state language status.

Transition to another principle in spelling of foreign personal names i.e. spelling only of the original form at a time when the Latvian language as the state language is just consolidating could negatively influence the above process.

4.3. To diminish the inconvenience caused by the reproduction of the person's name the Language Law determines that " in person's passport... in addition to the person's name and surname, which are reproduced...the original form of the personal names of other languages in a Roman alphabetic transliteration must be indicated, if the person... desires it and is able to provide documents verifying it."

The notion of the word "in addition to" has been specified in Regulations No.310. Item 6 of the Regulations determines: " if the person desires it, the original form of the name and surname must be entered in the passport page for "special notes" on the basis of documents verifying the name. The person herself/himself submits the documents, verifying the original form of the name and the surname."

When evaluating Item 6 one should pay attention to the fact that Regulations No. 310 have not been amended after the Language Law took effect. Therefore it shall be understood that the notion "the original form of the name and the surname" used in it includes also the original form of a foreign personal name.

On the second hand, Item 6 determines the place where the original form is to be entered, i.e. the page for "special notes". Information on registration of marriage and divorce, registration of residence and departure, participation in elections or referendums are also entered in that section (*see Item 8 of Regulations No. 310*).

As the reproduction of foreign personal names can be regarded as a limitation of the private life, which causes psychological discomfort and sometimes – when traveling or concluding agreements etc. - also creates complications and misunderstanding, application of the above determined

by law limitation should be as careful as possible and respectful to the individuality of a person and his/her family ties.

However, on November 10, 1994 the director of the Citizenship and Immigration Department of the Ministry of the Interior passed Order No.52, confirming the procedure of application of "The Instruction on the Passports of the Republic of Latvia Citizens" (henceforth – the Instruction). Its Section III envisages that the original form of the foreign personal name shall be entered only on page 14. Besides contrary to the second part of Article 19 of the Language Law and Regulations No. 310, Item 3.8 (on the request of the Latvian citizen) permits the possibility of entering the original form into the passport if "the form has noticeably changed in comparison with the former documents".

Thus, by not amending the Instruction after the above normative acts took effect, it is possible even to ignore the requirement of an individual to fix the original form of the personal name in the passport.

One cannot agree with the argument of the Cabinet of Ministers that it is impossible to enter the original form of the foreign personal name or a note that the original form could be found in another page of the passport in the so-called visually examined zone 06/07/11 of the current Latvian passports and the new passports, which have been "elaborated and ordered". The Cabinet of Ministers has made reference to Item 3.4.1. of the 9th. Supplement of the Convention and Doc 9303, not taking into consideration that the Convention and its supplements do not prohibit entering the above note in the visually examined zone, but simply does not envisage it. For example. Item 9.3 (Doc 9303, Chapter III, supplement 3) recommends not to enter notes on granted and inherited titles, professional or university education, gratuities and awards in the visually examined zones of machine readable passports. However, if the state considers it necessary to enter the notes like the above and it is determined by the law, the elements may be entered into the visually examined zone of the passports. The invited person A.Krēķis and the expert M.Stengrevica also admitted that the original form of a foreign personal name in Roman alphabetic transliteration technically could be entered as a special note both into page 3 of the current passport and the data page of the new passport.

As the transcription of personal names in the documents has been determined only in one state – Latvia (*see the conclusion by the expert I.Druviete, page 536 of the case*) the Cabinet of Ministers, if it held that Doc 9303 does not envisage entering the note on the original form of a person's name in the visually examined passport zone, had the possibility of referring to Article 38 of the Convention. The Article regulates the activity of states in cases when it is difficult to observe all the international standards or aspects of procedure. In such cases the particular state has to immediately inform the

International Civil Aviation Organization on differences between the practice of the state and that determined by the international standard.

Ungrounded is the concern of the Cabinet of Ministers that –if entering the original form of the foreign personal names in the data page - it would be necessary to use not only letters of the Roman alphabet but letters of other alphabets as well. They hold that "The Republic of Latvia is not able to materially and technically ensure it in accordance with the equality principle". However, the second part of the Language Law Article 19 determines that the original form of a foreign personal name shall be written only in the Roman alphabetic transliteration.

Besides, the conception on identification cards, accepted by the Cabinet of Ministers (*see <http://www.pid.gov.lv>*) envisages that when the cards are introduced, the greatest part of Latvian inhabitants will not need passports.

Taking into consideration the fact that the Cabinet of Ministers, when choosing the space for entering the original form of a foreign personal name the passport has not done its utmost to avoid offending the person whose name is reproduced, the norm incorporated into Item 6 of Regulations 310 on entering the original form of a foreign personal name and surname under the title "special notes" limits private life disproportionately and is unconformable with both - Article 96 of the Satversme (Constitution) and the second part of the Language Law Article 19.

- 4.4. The Cabinet of Ministers Regulations No. 295 alongside with reproduction of the original form of a foreign personal name envisages also the so-called **approximation** of the name and surname –adjustment of the form of the name and surname to the currently effective forms of the Latvian language. Approximation is applied if the former usage of the name/surname in personal documents contradicts the current norms of the Latvian language.

Observing the requirements of Item 6 of Regulations No. 295, approximation may be applied: firstly if the documents are issued for the first time, e.g. issuing the birth certificate; secondly, if they are issued repeatedly, say, in case of losing one's passport or if its expiry date has passed.

In its turn Item 7 of Regulations No. 295 establishes that reproduction of the name or surname and approximation of its form may be accomplished by:

- 1) municipality registration offices (if approximation has not been done when issuing the passport) – when making an entry into the registry office book as well as when repeatedly handing out the registration certificate;

- 2) the Department of Citizenship and Migration- when issuing a new personal document (if approximation has not been done when handing out the registration certificate);
- 3) diplomatic and consular offices of the Republic of Latvia abroad when issuing identification documents.

If the applicants surname in her passport would have been reproduced not as *Mencena* but let us say as *Mentcena* then - in case if she had lost her passport - in accordance with the current procedure officials of the above institutions, when issuing a new passport would have the right of approximating the surname and excluding the letter "t" from it.

The material in case (*see pages 416-456 of the case*) prove that such an approximation of the name and surname and not only in connection with persons, who have got married with a citizen of another country or a foreigner, is widely spread.

Besides the II Section of the Cabinet of Ministers draft "Regulations on the Spelling and Usage of Foreign Personal Names" (*see pages 246 -280 of the case*) envisages repeated approximation, which, when issuing the new passports might concern not only the persons whose names have been reproduced after getting married with a foreign citizen or a non-citizen but also quite a lot of other inhabitants of Latvia.

Precision and consequence is needed in usage and spelling of personal names. However, since the renewal of the independence of Latvia till this moment, several regulations by the Cabinet of Ministers and different instructions have regulated usage and spelling of personal names (*see "On usage and spelling of names and surnames in the Latvian literary language." The Republic of Latvia Language Centre, 1999; Regulations No.295*).

Envisaging the possibility of reproducing the original forms of foreign personal names in Latvian, the state should take care of the stability of personal names and ensure existence of this stability. Even though Regulations No. 295 do not regard approximation of the name or surname to the currently effective norms of the Latvian language as a alteration of the name or surname, the above procedure creates a certain precariousness as the individual has to take into consideration that his/her identity and ties with the family might be doubted.

From the moment the reproduced personal name is entered into the Republic of Latvia passport, the person has the right not only to use

it but also to protect it. Errors or inaccuracy of the officials of the above institutions when applying regulations on spelling and usage of foreign personal names in Latvian as well as new conclusions in the sector of linguistics cannot serve as the reason to change the spelling of the once reproduced and fixed in identity documents personal names

Therefore approximation of personal names, if they have already been reproduced and if the individual himself/herself does not require it, when compared with the legitimate objectives in determining limitations of private life, is disproportional.

5. To better identify a person and to maintain the stability of personal names as well as not to disproportionately limit the fundamental rights of a person, fixed in Article 96 of the Satversme (Constitution), the Constitutional Court draws the attention of the Cabinet of Ministers to the fact that not only the procedure of approximating personal names regulated in Regulations No.295 but also that, established in the draft Regulations on Spelling and Usage of Foreign Personal Names shall be evaluated.

On the basis of Articles 30 – 32 of the Constitutional Court law

The Constitutional Court

decided:

- 1. To declare that Article 19 of the State Language Law complies with the Articles 96 and 116 of the Republic of Latvia Satversme (Constitution).**
- 2. To declare that the Cabinet of Ministers August 22, 2000 Regulations No. 295 in the section on approximation of the reproduced and entered into the Republic of Latvia passports personal names, if the person does not require it as unconfirmable with Article 96 and 116 of the Republic of Latvia Satversme (Constitution).**
- 3. To declare Item 6 of the Cabinet of Ministers October 24, 1995 Regulations No.310 and Item 3.8 of the November 10, 1994 "Instruction on the Republic of Latvia Citizen Passports" confirmed in the Ruling by the Director of the Citizenship and Immigration Department of the Ministry of the Interior as unconfirmable with**

**Articles 96 and 116 of the Republic of Latvia Satversme
(Constitution) and null and void from July 1, 2002.**

The Judgment takes effect on the moment of its announcement.

The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga on December 21, 2001.

The Chairman of the Constitutional Court session Aivars Endziņš