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International Covenant on Civil and Political Rights

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Views

Communication No. 1621/2007

Submitted by:	Leonid Raihman (also known as Leonīds Raihmans) (represented by counsel, Aleksejs Dimitrovs)
Alleged victim:	The author
State party:	Latvia
Date of communication:	1 June 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2007 (not issued in document form)
Date of adoption of Views:	28 October 2010

* Made public by decision of the Human Rights Committee.

Subject matter:	spelling of author's name according to Latvian orthography in Identity documents
Procedural issue:	Non-exhaustion of domestic remedies
Substantive issues:	arbitrary and unlawful interference with private life; Prohibition of discrimination; protection of minorities
Articles of the Covenant:	article 17, alone and read in conjunction with article 2, Paragraph 1; article 26 and article 27
Article of the Optional Protocol:	articles 1; 2; 5, paragraph 2(b)

On 28 October 2010 the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1621/2007.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (one hundredth session)

concerning

Communication No. 1621/2007**

Submitted by:	Leonid Raihman (also known as Leonīds Raihmans) (represented by counsel, Aleksejs Dimitrovs)
Alleged victim:	The author
State Party:	Latvia
Date of communication:	1 June 2007 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 October 2010,

Having concluded its consideration of communication No. 1621/2007, submitted to the Human Rights Committee by Mr. Leonid Raihman (also known as Leonīds Raihmans) under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication, dated 1 June 2007, is Leonid Raihman (also known as Leonīds Raihmans), a Latvian national, member of the Jewish and Russian-speaking minorities. He was born 'Leonid Raihman' in 1959, and both his name and surname were registered as such by the Soviet Union public authorities, and used since then until January 1998, when the Latvian authorities changed his name and surname to the non-Russian, non-Jewish form of 'Leonīds Raihmans', although the author did not consent to this change. He claims to be a victim of violations of article 17, read alone and in conjunction with article 2, paragraph 1, article 26 and article 27 of the Covenant the International Covenant on Civil and Political Rights by Latvia. He is represented by counsel, Aleksejs Dimitrovs. The International Covenant on Civil and Political Rights

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

An individual opinion signed by Committee member Mr. Krister Thelin is appended to the text of the present Views.

entered into force for Latvia on 14 July 1992, and the Optional Protocol on 22 September 1994.

1.2 On 30 January 2008, the Special Rapporteur on New Communications and Interim Measures decided that the admissibility of the communication should be considered jointly with the merits.

The facts as submitted by the author

2.1 The author is a Latvian national, member of the Jewish, and Russian-speaking minorities. He was born 'Leonid Raihman' in 1959, and both his name and surname were registered as such by the Soviet Union public authorities, and used since then, including on his USSR passport, until January 1998. At that time, the author received a passport as a "non-citizen of Latvia" with his name and surname changed to the non-Russian, non-Jewish form of 'Leonīds Raihmans', although the author did not consent to this change. In January 2001, after becoming a citizen of Latvia through naturalization, he received a Latvian passport bearing the same name of 'Leonīds Raihmans'. The author claims that Raihman is a Jewish surname, which was used at least by his father, grandfather and grand-grandfather before him. His son was also born a Raihman in 1989.

2.2 The author has sought unsuccessfully to have his name officially recorded in accordance with its original Russian and Jewish origins, namely 'Leonid Raihman' instead of its Latvian form. On 10 February 2004, the author applied to the 'State Language Centre'[1], asking this entity to adopt a decision authorizing his name (Raihman) to be spelled without the ending 's' required under Latvian grammar rules for masculine names. He also asked that such decision allow him to spell his first name (Leonid) with an 'i' instead of a 'ī'. The author argued that the imposition by the State party's authorities of a Latvian spelling for his name was in breach of article 91 (non-discrimination), and article 114 (right to preserve cultural and ethnic identity) of the Constitution of the Latvian Republic, articles 17, 26 and 27 of the Covenant, as well as articles 8 and 14 of the European Convention on Human Rights and Fundamental Freedoms. On 20 February 2004, his application was dismissed because the State Language Centre determined that the Centre's decision could not be considered as an administrative act which may create obligations for the passport-issuing body.

2.3 On 18 March 2004, the author challenged the State Language Centre decision before the District Administrative Court, which rejected his claim on 11 May 2004. On 16 July 2004, this decision was upheld by the Regional Administrative Court. On 3 August 2004, the Supreme Court sent the case back to the District Administrative Court, recognizing that the State Language Centre decision was an administrative act, and that the case should be considered on the merits. On 5 November 2004, the District Administrative Court rejected the author's claim, arguing that the State Language Centre adopted its decision based on the State Language Law (1999) and the Regulation N°295 on Spelling and Identification of Names and Surnames (22 August 2000). The Court ruled that the Centre did not have the power to decide on the spelling of a name, as personal names can only be written in the Latvian language, based on the applicable legislative scheme. The Administrative Court also referred to a judgement of the Constitutional Court of Latvia[2], in which it upheld the constitutionality of section 19 of the State Language Law (1999)[3]. In that judgement, the

[1] Observance of the State Language Law (1999) is monitored by the State Language Centre, which is run by the Ministry of Justice.

[2] Case N° 2001-04-0103 of 21 December 2001.

[3] Section 19 of the Official Language law provides:

Constitutional Court had found that the imposition of a Latvian spelling for all personal names on official documents was a restriction necessary to meet the legitimate aim "to ensure the rights of other residents of Latvia to freely use Latvian on the whole territory of the Republic, and to protect the democratic state system, as well as to contribute to the Latvian language system stability".

2.4 On 21 November 2005, the Regional Administrative Court upheld this decision, deferring to the Constitutional Court decision of 21 December 2001. The Court also noted that based on section 19 (2) of the Official Language Law, a person can request to have his/her name also reproduced in its original form on official documents[4]. The Court further stressed that a personal name mainly reflected the belonging to a certain family and motherland, but could only in exceptional circumstances be such as to reflect belonging to an ethnic group. The Court considered the restriction imposed by the State Language Law to raise issues related to privacy rather than the right to ethnic identity. The Court further noted that such restriction did not aim at a "Latvianisation" of names, but was only an adjustment to the specific features of Latvian grammar.

2.5 On 16 May 2006, the Supreme Court (Department of Administrative Cases) upheld the decision of the Regional Administrative Court for the same reasons, with regard to the addition of the ending 's' to the author's surname. Concerning the spelling of his first name with 'ī' instead of 'i', the case was sent back to the Regional Administrative Court for consideration on the merits. Therefore, the author claims that he has exhausted domestic remedies with regard to the spelling of his surname with an 's'. The Supreme Court confirmed that the legislative restriction impugned was proportionate to the legitimate aim sought, and that it did not raise issues regarding equality, as it treated all names equally, regardless of their origin.

The complaint

3.1 The author claims that the legal requirement imposing a Latvian spelling for his name in official documents constitutes a breach of his rights under article 17, read alone and together with article 2, paragraph 1, article 26 and article 27 of the Covenant. Regarding article 17, the author affirms that that the right to retain his given and family name, including its graphical representation in writing, is an essential element of his identity. He argues that his right to have his name spelt according to its original spelling is an integral part of his right not to be subjected to arbitrary or unlawful interference with his privacy[5]. In the present case, the author considers that his name was changed unilaterally and without his consent, so as to comply with Latvian spelling. He considers that such interference with his privacy is arbitrary. He adds that the Latvian spelling of his name and

(1) Names of persons shall be presented in accordance with the traditions of the Latvian language and written in accordance with the existing norms of the literary language, observing the provisions of Paragraph two of this Section.

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

(3) The written form and identification of names and surnames, as well as the written form and use in the Latvian language of foreign language personal names, shall be regulated by Cabinet regulations.

[4] *Ibid*. para. 2

[5] The author refers to Communication No.453/1991, *Coeriel and Aurik v. The Netherlands*, Views adopted on 31 October 1994, para.10.2.

surname "looks and sounds odd" as it does not reflect a Jewish, a Russian, nor a Latvian name. It gives rise to various consequences in his daily endeavours, such as failed banking transactions, delays in immigration controls at airports, as well as other inconvenience in daily life. The author also claims that not being entitled to use his original name also has a significant bearing in private settings, notably regarding his interactions with his Russian-speaking and Jewish community.

3.2 The author further contends he was given a less favourable treatment than other Latvian residents because of his language and ethnic origin. Unlike him, persons belonging to the Latvian-speaking community (mainly ethnic-Latvians) can use their own names without any change. He argues that the interference by the State party with his privacy is therefore discriminatory, on the basis of language and, indirectly, ethnic origin, in violation of article 17, read in conjunction with article 2, paragraph 1. The author adds that such interference is disproportionate and unreasonable, as it has no bearing with the officially stated aim of ensuring that Latvians are able to use their own language. As such, he contends that the measure is arbitrary.

3.3 With regard to article 26, the author argues that this provision provides for an autonomous right, and prohibits direct and indirect discrimination. He notes that legislation adopted by the State party, which may appear to be neutral, may nevertheless result in discrimination under article 26 if it adversely impacts a certain category of persons, while not being based on objective and reasonable criteria[6]. Latvian is the native language of some 58% of the population. Therefore, the legislative restrictions aimed at modifying foreign names for these to conform with Latvian grammar impact negatively on a significant proportion of the non ethnic-Latvian population, who are *de facto* denied the same advantage enjoyed by most ethnic Latvians, i.e. the use of their own name and surname. According to the author, this effect is disproportionate with the aim sought by the State party, which is dubious in itself.

3.4 Concerning article 27, the author affirms that the Russian linguistic minority has existed in Latvia for centuries, and represents some 37.5% of the population. He adds that Russian is the mother tongue for 79% of Latvian Jews. The author stresses that a personal name, including the way it is spelled, is an essential cultural element for ethnic, religious and linguistic communities, and is strongly linked to their identity. He adds that the right to use one's own language, among members of a minority, is an essential right covered by article 27 of the Covenant. According to the author, the refusal by the State party's authorities to accept the original spelling of his name and surname amounts to a denial of his right to use his own language with other members of his community, both Russian and Jewish. He adds that he faces a form of assimilation pressure, which is not compatible with the aim and purpose of article 27[7].

State party's submissions on admissibility

4.1 On 28 January 2008, the State party challenged the admissibility of the communication. First, it alleged that the author did not exhaust domestic remedies, as required by article 2 of the Optional Protocol and Rule 90 (f) of the Committee's Rules of Procedure. The author had an effective remedy available before the Constitutional Court. The State party claims that in its judgment of 21 December 2001, the Constitutional Court was seized with the issue of the constitutionality of article 19 of the Language Law, as well

[6] The author refers to General Comment N°18 (Non discrimination), para. 12.

[7] The author refers to General Comment N°23 (the rights of minorities), para. 9, and to M. Nowak's Commentary to the Covenant (1993), p.502.

as three relevant, associated regulations[8]. While the Court upheld the constitutionality of article 19 of the Official Language Law, it found the three regulations challenged to be unconstitutional. As a result, they were all repealed, and replaced by new legislative provisions[9], which have not yet been challenged on their constitutional legality. The author has therefore not exhausted domestic remedies at his disposal.

4.2 The State party further submits that the author's complaint under article 17 should be held inadmissible under articles 1 and 2 of the Optional Protocol as incompatible *ratione personae*, as the author failed to demonstrate that he was a "victim" of a violation of article 17 of the Covenant. The State party emphasizes that following the decision of the Constitutional Court of 21 December 2001, it undertook a number of mitigation measures, such as establishing that the original or historical form of the identity document-bearer be reproduced on page 4 of the passport. Pursuant to article 10 of the Regulation N°295 on spelling and identification of names and surnames (which was applicable at the time when the author was issued a new passport), the form of a personal name in the Latvian language had identical legal force with its original, historical or transliterated form. The same principle continues to prevail through articles 145 and 146 of Regulation N°114 on spelling and usage of personal names in the Latvian language, as well as identification. The State party contends that the author did not suffer a prejudice as a result of the reproduction of his name in its Latvian form on his passport. He has failed to show that the Latvian State authorities disregarded or disputed the original form of his name, or what inconvenience he suffered as a result. The inconvenience encountered by the author during his travels may be attributed to other States, the responsibility of which cannot be imputed to the State party. As a result, it cannot be held that the Latvian authorities breached the author's right to privacy under article 17 of the Covenant.

4.3 Similarly, the State party is of the view that the author failed to show, for purposes of admissibility, that he was the victim *ratione personae* of a violation under article 27 of the Covenant. He has not demonstrated that the State party was guilty of omissions, which precluded his enjoyment of the rights guaranteed under this article. The requirement of reproduction of personal names in accordance with Latvian grammar only relates to official documents. The author remains free to use his original name in his private life, professional activities, and with his family and community members. As such, the State party considers that his claim is inadmissible under article 2 of the Optional Protocol. Subsidiarily, the State party argues that the author's claim is ill-founded.

4.4 With regard to article 2 paragraph 1 of the Covenant, the State party considers that this provision cannot be invoked directly and in isolation. As he failed to show that he was the victim of a violation of article 17, the author cannot allege a violation of article 2 paragraph 1 alone.

4.5 Regarding the author's claims under article 26, the State party argues that he failed to show, for admissibility purposes, that he was discriminated against on the basis of language and ethnic origin. The legal provisions providing for the reproduction of personal names in Latvia are equally applicable to all personal names registered in passports.

[8] Regulation N°295 "on spelling and identification of names and surnames", Regulation N°310 "on Latvian citizens' passports" and N°52, on the procedure for implementation of Regulation N°310.

[9] Regulation N°114 "on spelling and usage of personal names in the Latvian language, as well as identification"; Law "on personal identification documents"; and Regulation N°378 "on citizens' identification documents, non-citizens' identification documents, citizens' passports, non-citizens' passports and stateless persons' travel documents" (which provides that the original form of personal names shall be entered in the passport's 4th page)

State party's submissions on merits

5.1 On 27 May 2008, the State party argues that there is no violation of article 17, taken alone or in conjunction with article 2 paragraph 1. The author's name was not changed, but merely reproduced by applying relevant statutory provisions applicable to names of foreign origin. Article 17 of the Covenant does not protect the right to a name, as the text of the provision does not make a direct reference to the name, and neither General Comment N°16, nor the jurisprudence, clearly defined the scope of the right to privacy. It cannot therefore be said that this right encompasses the graphical representation of a name, which was solely modified to adapt it to the particularities of the Latvian language. Therefore, this measure did not infringe the author's rights under article 17. Subsidiarily, the State party submits that should the Committee conclude otherwise, the right to privacy is not an absolute right, and the interference suffered by the author had the legitimate aim to ensure the proper functioning of the Latvian language as in integral system, which is a social necessity. The State party further stresses that the measure undertaken is reasonable in relation to the goal sought. It adds that the measure was provided for by law, and was, as such, lawful and not arbitrary.

5.2 Regarding article 2 paragraph 1, the State party argues that the author failed to demonstrate that he has been discriminated against on the basis of language or ethnic origin. It affirms that the author was treated in the same way as all other ethnic Latvians, whose names are also subjected to grammatical declinations on the basis of gender.

5.3 Similarly, in relation to article 26, the State party reiterates that the provisions governing the reproduction of names in official documents are equally applicable to all personal names, regardless of their language or ethnic origin[10]. As a result, the State party submits that the author's claim under article 26 is ill-founded.

5.4 On article 27, the State party reiterates that section 19 of the Official Language Law only regulates the reproduction of personal names on official documents. This does not extend to the use of the original or historic form of an individual's name in private contexts, including in ethnic communities. The author failed to show that he was denied the right to use his name in its original form among the Jewish or Russian-speaking community, nor could he name any institution or persons who prevented him from using his name in such context. On the contrary, the State party notes that the author used his name in its original form on internet websites, as well as in publications and researches. It concludes that his complaint under article 27 is manifestly ill-founded or, alternatively, that there has been no violation of article 27.

Author's comments on the State party's submissions on admissibility and merits

6.1 On 18 February 2009, the author submitted comments in response to the State Party's observations on both admissibility and merits. Regarding the question of exhaustion of domestic remedies, he argues that in light of the Constitutional Court decision of 21 December 2001, no remedy was available, which would have offered him a reasonable prospect of success[11]. He stresses that in that decision, the Constitutional Court upheld the constitutionality of the policy of "Latvianisation" of names, and while it outlawed the legal

[10] The State party refers to jurisprudence of the European Court of Human Rights (ECHR), notably the *Kuharec* v. *Latvia*, application n°71557/01, where the ECHR found that declinable gender endings are added to all personal names equally, irrespective of whether they are of Latvian language or other language origin. As a consequence, the Court held that the treatment impugned could not be held discriminatory.

[11] The author refers to Communication N°437/1990, *Patiño* v. *Panama,* decision on admissibility adopted on 21 October 1994, para. 5.2.

provision specifying the place where the original names of passport-holders' could appear, it simply means, in practice, that the historic/original form of the name can now appear on the fourth page of passports. The author stresses that decisions of the Constitutional Court are legally binding, and should he have brought a complaint before this instance on the legality of section 19 of the Official Language Law, which was already considered by the Court, his case would have been declared inadmissible. The fact that throughout the legal proceedings he undertook, this decision of the Constitutional Court was extensively referred to, is an additional indication of this.

6.2 The author reiterates that the imposed restriction on the writing of his name is an arbitrary measure inconsistent with article 17, and that a personal name, including the way it is spelt, is an essential element of personal identity. The declinable endings added to his name and surname disclose a change in his name, not only in its graphic representation, but also in its pronunciation. The derogation permitted by article 19 (2) of the Official Language Law, allowing the original form of the name to appear on passports and birth certificates only extends to these specific documents. Also, there is no indication that the historic form of the name has the same legal value as the official version under that law. The author contests the fact that he is free to use his original name in private endeavours, such as banking transactions, and provides an example of instances where despite his request, he had to use the official form of his name to be able to renew his credit card and his driving licence. Referring to the *Coeriel* decision of the Committee[12], the author contends that if article 17 protects the right to change one's name, it *a fortiori* protects the right to restore forcibly changed names. In conclusion, he invites the Committee to hold that the State party breached article 17 in his regard. To the extent that the language policy only affects the non Latvian-speaking minority, which represents a significant proportion of the State party's population, the author also reiterates that the State party breached article 17, read in conjunction with article 2, paragraph 1, of the Covenant[13].

6.3 Regarding article 26, the author reaffirms that the Language Law *de facto* results in discrimination for the ethnic and linguistic minorities in Latvia, which are denied the right to use their own name and surname in accordance with their own language rules, an advantage guaranteed and enjoyed by ethnic Latvians. The author reaffirms that such restriction is disproportionate to the aim sought. As a conclusion, he reiterates that the State party breached article 26 in his regard.

6.4 Concerning article 27, the author reaffirms that his rights under article 27 have been breached by the denial to use his name in daily and professional activities, and in his interactions with members of his community.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules and procedures, decide whether or not it is admissible under the Optional Protocol of the Covenant.

7.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

[12] *Supra*, note 6.

[13] The author also refers to the Committee's Concluding Observations (CCPR/CO/79/LVA), para. 19 (2003), in which the Committee expressed concern over the impact of the language policy on minorities, including the significant Russian-speaking minority.

7.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, and the State party's argument that the author did not exhaust domestic remedies at his disposal, the Committee notes that the author unsuccessfully sought to have his name officially recorded in its original Russian and Jewish forms, namely 'Leonid Raihman' instead of its Latvian form currently used on his official identity documents. The author applied to the State Language Centre, to the District Administrative Court, the Regional Administrative Court, and ultimately to the Supreme Court, which upheld the decision of the Regional Administrative Court with regard to the addition of the ending 's' to the author's surname. The Committee also took note of the decision of the Constitutional Court of 21 December 2001, which upheld the constitutionality of article 19 of the Language Law, which provides that "names of persons shall be presented in accordance with the traditions of the Latvian language, and written in accordance with the existing norms of the literary language" (paragraph 1). The Committee notes that this decision was applied as a binding precedent throughout the legal decisions adopted against the author. It recalls that only domestic remedies, which are both available and effective, must be exhausted. In the present case, the author's complaint relates directly to the same issue already considered by the Constitutional Court in 2001. It is therefore reasonable to assume that should the author lodge an appeal before this instance, it would in all likelihood be rejected. In these circumstances, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering of the communication.

7.4 Regarding the State party's argument that the author could not establish that he was a "victim" in the sense of article 1 of the Optional Protocol, concerning his allegations relating to articles 17 and 27 of the Covenant, the Committee recalls that a person may not claim to be a victim within the meaning of article 1 of the Optional Protocol unless his or her rights have actually been violated, and that no person may contest a law or practice which that person holds to be at variance with the Covenant in theoretical terms by *actio popularis*[14]. In the instant case, the Committee finds that the author has shown sufficient standing, in that he has sufficiently substantiated that the legislation and policy on State Language have directly impaired his rights under article 17, read alone and in conjunction with article 2, paragraph 1, article 26 and article 27 of the Covenant. It therefore proceeds to the examination of these allegations on the merits.

Consideration of merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided under article 5, paragraph 1, of the Optional Protocol.

8.2 Regarding the alleged violation of article 17, the Committee has taken note of the author's argument that the legal requirement imposing a Latvian spelling for his name in official documents, after 40 uninterrupted years of use of his original name, resulted in a number of daily constraints, and generated a feeling of deprivation and arbitrariness, since he claims that his name and surname "look and sound odd" in their Latvian form. The Committee recalls that the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others, or alone. The Committee further expressed the view that as person's surname constitutes an important component of one's identity, and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against

[14] *See* communication No. 318/1988, *E.P. et al. v. Colombia*, inadmissibility decision of 25 July 1990, para. 8.2; and communication No. 35/1978, *Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, Views adopted on 9 April 1981, para. 9.2, and Communication N°1746/2008, *Goyet* v. *France*, decision on admissibility adopted on 30 October 2008, para. 6.3.

arbitrary or unlawful interference with the right to choose and change one's own name[15]. In the present case, the author's name was modified so as to comply with the Latvian grammatical rules, in application of section 19 of the Language Law and other relevant regulations. The interference at stake cannot, therefore, be regarded as unlawful. It remains to be considered whether it is arbitrary.

8.3 The Committee recalls its General Comment on the right to privacy[16], where it established that the expression "arbitrary interference" can also extend to interference provided for under the law. The Committee notes that section 19 of the State party's Language Law provides for the broad and general principle that all names must comply with the Latvian language, and be written according to the Latvian rules. No exception is contemplated for names of different ethnic origin. The Committee recalls that the introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances[17]. It took note of the State party's stated aim for such interference, said to be a measure necessary to protect the Latvian language and its proper functioning as an integral system, including through guaranteeing the integrity of its grammatical system. The Committee further took note of the difficulties to which the Latvian language was exposed during the Soviet rule, and considers that the objective stated is a legitimate one. The Committee however finds that the interference entailed for the author presents major inconveniences, which are not reasonable, given the fact that they are not proportionate to the objective sought. While the question of legislative policy, and the modalities to protect and promote official languages is best left to the appreciation of State parties, the Committee considers that the forceful addition of a declinable ending to a surname, which has been used in its original form for decades, and which modifies its phonic pronunciation, is an intrusive measure, which is not proportionate to the aim of protecting the official State language. Relying on previous jurisprudence, where it held that the protection offered by article 17 encompassed the right to *choose and change* one's own name, the Committee considers that this protection *a fortiori* protects persons from being passively imposed a change of name by the State party. The Committee therefore considers that the State party's unilateral modification of the author's name on official documents is not reasonable, and thus amounted to arbitrary interference with his privacy, in violation of article 17 of the Covenant.

8.4 Having found a violation of article 17, with respect to the unilateral change of the author's name by the State party, the Committee does not consider it necessary to address whether the same facts amount to a violation of article 26, article 27, or article 2, paragraph 1, read in conjunction with article 17.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 17 of the International Covenant on Civil and Political Rights.

10. Pursuant to article 2 of the Covenant, the State party is under an obligation to provide Mr. Raihman with an appropriate remedy, and to adopt such measures as may be necessary to ensure that similar violations do not occur in the future, including through the amendment of relevant legislation.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a

[15] *See* Communication No.453/1991, *Coeriel and Aurik v. The Netherlands*, *supra,* note 6, para.10.2.
[16] General Comment N°16 (1988), para. 4.
[17] *See* Communication N°558/1993, *Canepa* v. *Canada,* Views adopted on 3 April 1997, para. 11.4.

violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion of Committee members Mr. Rafael Rivas Posada and Mr. Krister Thelin (dissenting)

The majority has found a violation in this case. We respectfully disagree. The reasoning and conclusions on the merits should in our view instead read as follows:

8.2 Regarding the alleged violation of article 17, the Committee has taken note of the author's argument that the legal requirement imposing a Latvian spelling for his name in official documents, after 40 uninterrupted years of use of his original name, resulted in a number of daily constraints, and generated a feeling of deprivation and arbitrariness, since he claims that his name and surname "look and sound odd" in their Latvian form. The Committee recalls that the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others, or alone. The Committee further expressed the view that as person's surname constitutes an important component of one's identity, and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name[1]. In the present case, the author's name was modified so as to comply with the Latvian grammatical rules, in application of section 19 of the Language Law and other relevant regulations. The interference at stake cannot, therefore, be regarded as unlawful. It remains to be considered whether it is arbitrary.

8.3 The Committee recalls its General Comment on the right to privacy[2], where it established that the expression "arbitrary interference" can also extend to interference provided for under the law. The Committee notes that section 19 of the State party's Language Law provides for the broad and general principle that all names must comply with the Latvian language, and be written according to the Latvian rules. The Committee recalls that the introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances[3]. The Committee takes note of the difficulties to which the Latvian language was exposed during the Soviet rule, and accepts the State party's argument, that the linguistic policy and laws adopted are necessary to protect the Latvian language, including the integrity of its grammatical system. The Committee stresses that the question of legislative policy and the modalities to protect and promote official languages are best left to the appreciation of States, and finds the State Party's objective to be a legitimate one in the circumstances. The Committee further finds that the interference entailed for the author was proportional to the aim sought, and concludes that it was reasonable. As such, the State party's modification of the author's name on official documents does not amount to arbitrary interference with his privacy within the meaning of article 17 of the Covenant[4].

[1] *See* Communication No.453/1991, *Coeriel and Aurik v. The Netherlands*, *supra,* note 6, para.10.2.
[2] General Comment N°16 (1988), para. 4.
[3] *See* Communication N°558/1993, *Canepa* v. *Canada,* Views adopted on 3 April 1997, para. 11.4.
[4] Cf. the European Court of Human Rights in *Kuhareca* v. *Latvia*, application N° 71557/01 (7 December 2004), and *Mencena* v. *Latvia,* Application N°71074/01 (7 December 2004).

8.4 Regarding article 26, the Committee takes note of the author's argument that the State Language Law, while it may appear to be neutral, results in discrimination under article 26 on the basis of language and ethnic origin in his regard, as it adversely impacts the non-ethnic Latvian and non Latvian-speaking minority. He claims that unlike the Latvian majority, he cannot use his name in its original form. The Committee recalls that a violation of article 26 may result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate. However, such indirect discrimination can only be said to be based on the grounds set out in article 26 of the Covenant if the detrimental effects of a rule or decision exclusively or disproportionably affect persons having a particular race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, rules or decisions with such an impact do not amount to discrimination if they are based on objective and reasonable grounds[5]. In the circumstances of the present case, the Committee notes that the imposition, through section 19 of the State Language Law, of a name spelling, which is in conformity with the Latvian grammar, applies to all individuals equally, be it ethnic Latvians or members of minorities such as the Jewish and Russian-speaking minority. Accordingly, the Committee considers that the restriction imposed is based on objective and reasonable grounds. As a result, such interference does not constitute differential treatment contrary to article 26.

8.5 With regard to the claim under article 2, paragraph 1, raised by the author in conjunction with article 17, the Committee similarly considers that the law impugned, which equally applies to all persons under the State party's jurisdiction, is based on objective and reasonable grounds and, as such, does not raise issues under article 2, paragraph 1, invoked in connection with article 17 of the Covenant.

8.6 Finally, with regard to article 27, the Committee first notes that it is undisputed that the author is a member of the Jewish, and Russian-speaking minorities in Latvia. The Committee, referring to its earlier jurisprudence[6], recalls that States parties to the Covenant may regulate activities that constitute an essential element in the culture of a minority, provided that the regulation does not amount to a de facto denial of this right[7]. In the circumstances of the case, the Committee considers that the imposition of a declinable termination on his name and surname did not adversely affect his right, in community with the other members of the Jewish and Russian speaking minorities of Latvia, to enjoy his own culture, to profess and practice the Jewish religion, or to use the Russian language. In such circumstances, the Committee concludes that the restriction involved does not amount to a violation of article 27 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

[5] *See* General Comment N°18 (non-discrimination); *See also* Communication N°1474/2006, *Prince* v. *South Africa,* Views adopted on 31 October 2007, para. 7.5, and Communication N° 998/2001, *Althammer et al.* v. *Austria,* Views adopted on 8 August 2003, para. 10.2.

[6] *See, inter alia,* Communications N° 879/1999, *George Howard* v. *Canada*, Views adopted on 26 July 2005, para. 12.7, N° 197/1985, *Kitok v. Sweden*, Views adopted on 27 July 1988, No. 511/1992 and 671/1995, *Länsmann v. Finland*, Views adopted on 30 October 1996.

[7] *See Länsman* v. *Finland*, 511/1992, *ibid*, para. 9.4

[Signed]

Rafael Rivas Posada

Krister Thelin

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]