

Human Rights and a Person's Name: Legal Trends and Challenges

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ABSTRACT

The absence of a specific right to one's own name in early international human rights treaties seems perplexing in the twenty-first century until one appreciates the historical and legal contexts which initially made this omission almost unavoidable. The growing importance of human rights in international law, of the obligation to recognize and respect individual identity, as well as the generality of certain human rights standards such as the prohibition of discrimination, the right to private life, and the right to a name, have led to an evolution in the understanding and interpretation of these standards in more recent years. It is now increasingly accepted in international law and state practice that individuals are generally entitled to state recognition and use of their own names—including names in a language which may not be official.

I. INTRODUCTION

וְאֵלֶּה, שְׁמוֹת בְּנֵי יִשְׂרָאֵל, הַבָּאִים, מִמִּצְרָיִם

These are the names of the sons of Israel who went down into Egypt . . . as Reuben and Simeon they descended [into Egypt] and as Reuben and Simeon they went out.

Shemot 1:1 (Exodus)

This interpretation of the Torah's *Shemot*, meaning names in Hebrew (or the Book of Exodus for Christians), highlights the importance of names in all human society. It recounts the first exile of the Jewish people and the

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significance of maintaining their Hebrew names, which made them deserving of redemption from the slavery of Egypt.

Ironically, given the position of the name of a person as a central aspect of identity in most societies, this issue remained largely unaddressed in early human rights documents. It is true that it was not easy after World War II to achieve a consensus among states on the form and content of human rights. This explains, in part, why the 1948 Universal Declaration of Human Rights (UDHR) was accepted as a solemn declaration—but not a legally-binding instrument. There was no initial agreement as to what international human rights would actually mean in more concrete terms¹; one of these areas of disagreement was how to handle the topic of the identity of an individual.² While this was not fully debated in the immediate aftermath of World War II, there may now be a convergence as to whether or not someone has a right to his or her name.

There is a good reason the right to one's name has not been, until now, absolutely clear. On the one hand, common law countries in the twentieth century have tended to have a strong *laissez-faire* attitude in regard to the name of a person, whereas Continental European states have not. For countries such as Australia, Canada, the United Kingdom, and the United States, the law generally took the position that "a man may name himself, or change his name at will, and this without solemnity or formality of any kind."³ On the other hand, most countries in Continental Europe had, for historical reasons, an almost opposite reaction to the names of their citizens, with many beginning to develop legislation after the fifteenth century that only permitted Christian names, traditional names, or, somewhat later, names spelled according to the rules of the national culture or official language.

Asian and African naming practices were more varied, partially depending on whether they were influenced by common law or European civil law traditions; many parts of Africa and Asia also had indigenous practices in terms of names which were never completely displaced by Europeans. As for Islamic states, particularly in the Middle East and Northern Africa, pre-Islamic names that were not associated with Peoples of the Book or involving minorities were sometimes deemed a threat to the unity of the state and thus were also occasionally prohibited.

In other words, there was a surprising degree of differing views if not outright disagreement between countries in relation to naming practices. In the twentieth century, this seems to have prevented any consensus as to

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1. For a detailed description of the processes and compromises involved, see PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN* (3d ed. 2011).
 2. For the purposes of this article, name will be used as a generic term to include forenames (or first names) and surnames (last or family names). When appropriate, the more specific terms forenames or surnames may at times be used.
 3. "What's in a Name?," N.Y. L. Rev. 1 (1924).

whether or not individuals should have the “right to their own names” when international human rights took shape with the adoption of the UDHR. The result initially—and perhaps unfortunately—was simply for early human rights documents to avoid dealing with this matter directly.

While later treaties did include the right to “a” name,⁴ there was still no obvious consensus as to whether this meant only the right to a name—deemed acceptable or determined by state authorities along the lines of more Continental European traditions—or whether individuals could claim the recognition and registration of their own name, in their own language or reflecting their own culture or religion, which tended to be the case in common law countries.

This is but a partial explanation for what, in the twenty-first century, might be considered a rather odd omission: how is it possible that basic human rights treaties internationally, as well as in Europe, the Americas, and Africa, premised as they are on respect for the inherent dignity and worth of all individuals as human beings, including their very identity in terms of language, religion, and culture, appear to be largely silent on what is perhaps the most central, fundamental issue of the identity of a person: his or her own name?

While there are still areas of uncertainty, and even tension in relation to the “right to one’s own name,” particularly between the European human rights system and others, there are definite trends which are emerging

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4. At the global level, International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., art. 24 (2), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) states that “Every child shall be registered immediately after birth and shall have a name.” Along the same lines, Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., art. 8, U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3 (*entered into force* 2 Sept. 1990) [hereinafter CRC] guarantees “the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”, whereas Convention on the Rights of Persons with Disabilities, *adopted* 13 Dec. 2006, G.A. Res. 61/106, U.N. GAOR, 61th Sess., art. 18, U.N. Doc. A/RES/61/106 (2007) (*entered into force* 3 May 2008) (CRPD) indicates that children with disabilities must be registered after birth and must have the right to a name. Initial explanatory documents as to what “right to a name” means were not helpful since they seemed to refer mainly to the obligation that all children have a recognized name and did not deal with who should be entitled to determine this name. *See, e.g., General Comment No. 17: Rights of the child (Art. 24), adopted* 35th sess., Hum. Rts. Comm. (7 Apr. 1989). At the regional level, early human rights treaties also only referred to the right to a name, not to one’s own name, with some nuances: American Convention on Human Rights, *signed* 22 Nov. 1969, art. 18, O.A.S. Doc. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979), O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (*entered into force* 18 July 1978) specifies that “Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary,” while the 1999 African Charter on the Rights and Welfare of the Child, *adopted* 11 July 1990, art. 6(1), O.A.U. Doc. CAB/LEG/24.9/49 (*entered into force* 29 Nov. 1999). African Charter on the Rights and Welfare of the Child simply admits that “Every child shall have the right from his birth to a name.”

towards a greater recognition of and respect for the most central aspect of identity in an individual: his or her own name.

It is impossible to describe all the different national modalities as to the recognition or use of names by state authorities in every country over the centuries. Nevertheless, it is possible to summarize the main approaches in different countries and periods until the 1960s, when international human rights made their general appearance. The following list outlines the main approaches in place until the last century:

1. Laissez-faire: authorities leave the choice of first names to the parents. There may be a requirement of a surname or patronym, but no interference in the language or cultural modalities, other than consistency, in their use among members of the same family. In some countries it is possible to have a single personal name.
2. Laissez-faire, but not for everyone (slaves, minorities, indigenous peoples, serfs, and Dalits are given names according to dominant language or culture).
3. Laissez-faire, but with different modalities for surname or patronym usually consistent with official language(s).
4. Only first name or surname in the official language(s), or national tradition, including spelling so that names “sound” as if they are in the official language.
5. Only first name in an officially prescribed list (usually only names in the official language—sometimes deemed traditional, “Christian,” or “Muslim”—or an “acceptable” language).

It should be added that in all of the above approaches, state authorities still tend to prohibit names (usually first names) that are obscene, offensive, or impractical (i.e., authorities would reject recognizing a child having the name of “3” or only a symbol). Beyond these types of general limitations to the recognition and use of names by state authorities, a few countries also prohibit names that are confusing as to gender (Germany), or more vaguely are against the interests of the child (New Zealand).⁵

These extremely diverse naming requirements and restrictions are unavoidable given the very different contexts, cultures, and histories affecting the interaction between states and the population of a country. Until World War II, the decision as to these naming requirements and restrictions would

5. See *Who, What, Why: Why do Some Countries Regulate Baby Names?*, BBC NEWS, 1 Feb. 2013, available at <http://www.bbc.com/news/magazine-21229475>. The results of these different approaches can be surprising for some: in laissez-faire states such as the United Kingdom and the United States, parents have given names such “King’s Judgment,” “Adolf Hitler,” “Cholera Plague,” “Noun,” “Comma,” and perhaps more famously “The Artist Formerly Known as Prince.” First names which are not permitted because of language requirements or necessity to be in a prescribed list are “Carolina” (Iceland), “Mona Lisa” (Portugal), and “Matti” (Germany: because this first name leaves the gender of the individual difficult to determine).

simply be treated from an international legal point of view as falling within the sovereignty of a state: national governments were authorized in international law to deal with their own people according to their own laws with little or no limits, as unjust or even cruel as it may have been under racist or intolerant governments such as the Nazis in Germany or General Franco in Spain.⁶

But the emergence of human rights in the second half of the twentieth century, and the recognition of the inherent “dignity and worth of the human person,” now limit a state’s sovereignty, including the names of individuals which authorities may sometimes refuse to recognize or use in disregard of the “dignity and worth” of individuals.

There is now no doubt that under international human rights, individuals have a “right to their own name,” though, as will now be seen, states also have legitimate interests which need to be taken into consideration. The difficulty is to determine the balance: what precisely does human rights law protect in terms of the name of an individual, and what is the extent and conditions under which state authorities can ignore the name of an individual and impose their own preferences and requirements?

II. EMERGENCE AND EVOLUTION OF THE HUMAN RIGHT(S) RELATING TO A PERSON'S NAME

Central to the rights of minorities are the promotion and protection of their identity. Promoting and protecting their identity prevent forced assimilation and the loss of cultures, religions and languages—the basis of the richness of the world and therefore part of its heritage. Non-assimilation requires diversity and plural identities to be not only tolerated but protected and respected.⁷

To put it simply and concisely, there is, in fact, more than one human right that affects the name of a person.

From an international legal point of view, the issue of the name of a person—and any connected right—can take four different types of legal arguments in international and regional human rights treaties: as part of

6. Nazi Germany did not allow all individuals to freely choose and use their own names, but here the approach was very different. While most Germans most of the time were allowed to use and have recognized their own names, this was not the case for Jews soon after Adolf Hitler was elected to power. Their identity needed to be highlighted—even against their will—so that “good Aryans” could be protected from undesirable interaction and contact. For this reason, Jews in Germany from 1939 were not allowed to have their own names used and recognized: they were instead legally forced to adopt and use an additional unambiguously Jewish sounding forename to make their identity clear for all. SAUL FRIEDLÄNDER, *NAZI GERMANY AND THE JEWS, 1933–1945*, at 99 (2009).

7. UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (UNOHCHR), *MINORITY RIGHTS: INTERNATIONAL STANDARDS AND GUIDANCE FOR IMPLEMENTATION* 8 (2010).

the right to private life; under the right to a name, as a specific right to one's own name for minorities and the indigenous, and in application of the prohibition of discrimination on any number of personal characteristics (in particular gender, but also on grounds such as language, ethnicity, etc.):

1. In Europe at the time of the adoption of the European Convention on Human Rights in 1950, there was initially no mention of any right connected to the name of a person.⁸ It would be deemed that the name of a person is, however, connected to his or her right to private life. The same linkage was also subsequently made between the right to private life and an individual's name in other treaties.
2. The UN system, the Inter-American system, and the African system of human rights all refer to the right of a child or an individual to "a" name—but not in Europe.
3. More recent European treaties (from the 1990s) acknowledge that individuals who belong to a national minority (or an indigenous people) have the right to their own name.
4. If some individuals are allowed by authorities to bear their own surnames or first names but others are not, the difference in treatment may also constitute prohibited discrimination if it is unreasonable or arbitrary. This is well established in the case of gender differences of treatment in relation to names.⁹

In addition to the above general legal standards, other instruments such as non-binding declarations and resolutions have been even more specific and unambiguous in relation to the issue of names. For example, the UN Declaration on the Rights of Indigenous Peoples¹⁰ and the Oslo Recommendations Regarding the Linguistic Rights of National Minorities¹¹ both

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8. There is no mention of any attention to the issue of any right to a name within the context of the right of private life in the *travaux préparatoires* to European Convention on Human Rights, art. 8, *opened for signature* 4 Nov. 1950, 213 U.N.T.S. 221, Europ. T.S. No. 5 (*entered into force* 3 Sept. 1953); European Commission of Human Rights, *Preparatory Work on Article 8 of the European Convention on Human Rights*, Information Document prepared by the Secretariat of the Commission, DH(56)12, Strasbourg (9 Aug. 1956), *available at* http://www.echr.coe.int/Documents/Library_TP_Art_08_DH%2856%2912_ENG.PDF.
 9. Tuncer Güneş v. Turkey, App. no. 26268/08, Judgment 3 Sept. 2013.
 10. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), art. 13(1), *adopted* 13 Sept. 2007, G.A. Res. 61/295, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/295 [hereinafter UNDRIP]: "Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons."
 11. The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note, Recommendation 1 (1998), *available at* <http://www.osce.org/hcnm/67531?download=true> [hereinafter Oslo Recommendations]. "Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems. These shall be given official recognition and be used by the public authorities."

acknowledge that individuals in these categories have the specific right to their own names, according to their own languages and traditions, recognized and used by state authorities.

These four different human rights approaches to the issue of any right connected to the name of a person show different priorities and probably some initial hesitancy, particularly from European states after World War II. While the initial European human rights treaty omitted any reference to a right to a name—whereas most other early human rights treaties did recognize this right, especially in relation to children—subsequent treaties and judgments have brought about a fairly dramatic change in Europe.

In other words, it seems that there are a series of converging trends, with the “right to a name” evolving into a more general right to “one’s own name.” At the same time, the right to private life in international law also seems to be moving in this direction. There is, however, no ambiguity in relation to more recent Council of Europe (CoE) treaties; they clearly require that national minorities be allowed to have their own names recognized and used by authorities. Finally, and somewhat similarly, it has become clearer through jurisprudence in recent decades that women must be enabled to keep their own names—if they so desire—in many countries under the application of the prohibition of discrimination in human rights law, because men are often given this option.

Dealing with each of these four human rights separately allows for a better understanding of the changes which have occurred as to their content and impact on the name of a person—and the apparent international legal recognition today that individuals should have the right to their own name, which state authorities must respect and recognize.

A. The Right to a Name: From Identification to Identity

Because names can reflect ethnic identity, governments reacting to ethnic minorities within their territory have often struck at names as a means of either heightening the stigma attached to the ethnic group or as a means of assimilation.¹²

The evolution of the right to a name in international human rights law is instructive: at the time of the first human rights treaty in Europe in 1950, European states had not sufficiently agreed whether or not naming, as a right, should be included in their new human rights system. A few decades later, however, international and regional human rights treaties from the end of the 1960s generally accepted the concept of a right to a name—except for the

12. Teresa Scassa, *National Identity, Ethnic Surnames and the State*, 11 *CANADIAN J. L. & Soc’y* 167, 174 (1996).

general European human rights system—though these still did not elaborate in content much beyond referring to a name which had to be registered by authorities.¹³ By the end of the 1980s a further clarification occurred. New international treaties such as the UN Convention on the Rights of the Child and the CoE treaties which deal with national minorities and languages added that the name that individuals can claim as reflecting their identity is “the” name of the individuals. This interpretation and approach were not so evident in the initial emergence of most human rights instruments.

Neither the wording of the international law provisions or the *travaux préparatoires*¹⁴ of the early treaties provided much insight on the intention beyond the necessity of the registration of a name for identification purposes. Article 24(2) of the International Covenant on Civil and Political Rights (ICCPR) simply states, for example, that “Every child shall be registered immediately after birth and shall have a name.” Article 18 of the Convention on the Rights of Persons with Disabilities provides that children with disabilities must be registered after birth and must have the right to a name. Similarly, Article 7 of the Convention on the Rights of the Child indicates that “the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.” However, there is an indication that this naming practice must be in accordance with national and international law. This last point is important, because it greatly limits the requirements or restrictions that a state may impose on the name of an individual.

However, both provisions do not specifically indicate that an individual has the right to his or her “own” name, nor do they say that this determination is completely left to the discretion of state authorities. The main focus, at least initially, in these provisions is the issue of name registration for the purposes of identification and of legal identity, as is often repeated in numerous UN, UNESCO, and UNICEF publications.¹⁵

A new concept, or perhaps more accurately a further elucidation of the right involved, enters the international arena by the end of the 1980s and is

13. The ICCPR, the CRC, the 1990 African Charter on the Rights and Welfare of the Child, and the American Convention on Human Rights all recognize a child right to a name. Neither the 1950 European Convention on Human Rights (see *supra* note 8) nor the European Convention on the Exercise of Children’s Rights, Council of Europe (COE) (25 Jan. 1996), available at <http://conventions.coe.int/Treaty/en/Treaties/Html/160.htm>, recognize that children have the right to a name.

14. For example, there was little discussion in the *travaux préparatoires* of the issue of what was intended with the right to a name in what was to become CRC, *supra* note 4, art. 7. Most of the debate was around the issue of the right to a nationality for children. See THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE TRAVAUX PRÉPARATOIRES 123–31 (Sharon Detrick ed., 1992).

15. UNICEF, The Right to a Name and a Nationality, available at <http://www.unicef.org/pon96/coname.htm>.

added to the issue of identification and the right to a name: identity. Starting with Article 8 of the Convention on the Rights of the Child, the State has an obligation to protect, and if necessary, re-establish basic aspects of the identity of a child, including his or her name.

The final wording of Article 8, which became part of international human rights law was, however, not limited to "family identity" as was first suggested by the Argentinian representative: it is the identity of the child, including his or her name, which must be recognized and respected by state authorities. In the view of the Committee on the Rights of the Child, in areas such as culture, it is the names of children which preserve their identity and which authorities have an obligation to respect and use in their activities:

44. Furthermore, taking into account articles 8 and 30 of the Convention, States parties should ensure that indigenous children may receive indigenous names of their parents' choice in accordance with their cultural traditions and the right to preserve his or her identity. States parties should put in place national legislation that provides indigenous parents with the possibility of selecting the name of their preference for their children.¹⁶

Though the above General Comment focused on indigenous children, the same approach similarly applies to minorities, since Article 30 of the Convention applies to both categories of people.

One could argue, of course, that Article 8 is not directly connected to the right to a name (Article 7), since it refers to a quite separate children's right to the preservation "of their identity." Yet, what has more recently emerged is the use of Article 8 and more generally the acceptance of the importance of the identity of an individual as a core value in international human rights and which raises central issues that are becoming increasingly prominent and not always fully appreciated: what does international human rights law mean by a right to "a" name? What name should be recognized?

One can find the answer by gleaning the more recent jurisprudence from international bodies like the Inter-American Court of Human Rights that the right to a name is no longer only about identification (the traditional view usually associated with the obligation to register a name). It is clear that the Court understands that human rights have evolved and that there must now be recognized an individual identity aspect:

The right to a name has two dimensions. First, the right of all children to have a name and be duly registered [. . .] The second dimension is the right to preserve identity, including nationality, name and family relationships pursuant to the law, without unlawful interference.¹⁷

16. *General Comment No. 11: Indigenous Children and Their Rights Under the Convention*, U.N. Doc. CRC/C/GC/11 (2009), ¶ 44.

17. *Case of the Serrano Cruz Sisters v. El Salvador*, Inter-American Court of Human Rights, Judgment 1 Mar. 2005, at 68.

Other recent cases have confirmed, perhaps even more clearly, that the right to a name should be understood as the need to respect the identity of an individual and that this cannot be limited to the interest of a state in identification. This can be extrapolated from a number of human rights documents.¹⁸ In more recent years, the Inter-American Court of Human Rights declared that the right to a name under the Inter-American human right treaty is also affected by the concept of a person's name in international human rights law (the Convention on the Rights of the Child), meaning that it has "[an] indispensable element of . . . identity."¹⁹

B. The Right to Private Life

A name characterized by a state as "divergent" may be widely used among an ethnic or linguistic minority group. Barring the use of such a name may be a tool for the repression of cultural identity or reflect an attempt to maintain the hegemony of a certain culture.²⁰

The right to a name is usually presented in international law as one limited to a child, not as the right of an adult. And yet there were and in some cases still are situations in which adults—often belonging to minorities or indigenous groups—were forced by state authorities to change their names or use a name which was not theirs. Increasingly, globalization and the movement of people across borders also result in individuals with more than one citizenship or with changing citizenship: if one has to change his or her name and identity according to the legislation of every new country, this would potentially create additional problems in terms of identification.

It took a few decades, but by the early 1990s international jurisprudence had clarified that the name of a person not only includes adults as well as children but is also a component of the right to private life in international law, despite the apparent initial silence of human rights treaties to this effect.²¹ In this way a seeming omission or deficiency could be redressed—even if

18. An individual's identity is also acknowledged in International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, arts. 17, 21, 31, *adopted* by G.A. Res. 45/158 (18 Dec. 1990), *available at* <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>; Declaration on Race and Racial Prejudice, arts. 1(3), 5(1) (27 Nov. 1978), *available at* http://portal.unesco.org/en/ev.php-URL_ID=13161&URL_DO=DO_TOPIC&URL_SECTION=201.html; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, arts. 1(1), 5(1), *adopted* 18 Dec. 1992, G.A. Res. 47/135, *available at* <http://www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf>.

19. Contreras et al. v. El Salvador, Judgment 31 Aug. 2011, Inter-Am. Ct. Hum. Rts.

20. Aeyal M. Gross, *Rights and Normalization: A Critical Study of European Human Rights Case Law on the Choice and Change of Names*, 9 HARV. HUM. RTS. J. 269, 274 (1996).

21. Coeriel and Aurik v. Netherlands, United Nations Human Rights Committee, Communication No. 453/1991, U.N. Doc. CCPR/C/52/D/453/1991 (1994); Burghartz v. Switzerland, Eur. Ct Hum. Rts., Judgment 22 Feb. 1994, 18 E.H.R.R. 101.

in a rather haphazard way initially. The United Nations Human Rights Committee, for example, clarified that the notion of privacy includes:

[T]he 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 is of the view that a person's surname [and first name] 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.²²

Thus, public authorities could not interfere with the name of a person arbitrarily or unlawfully, and the UN Human Rights Committee has indicated that a restriction on the right of one to choose his or her own name would have to be reasonable to satisfy this requirement.

Similarly, the European Court of Human Rights (ECtHR) handed down a number of decisions confirming that the matter of the name or surname of a person is inherently a private matter protected by the right to private and family life:

[D]isputes relating to individuals' surnames and forenames come within Article 8 of the Convention. Although that provision does not mention a right to a name explicitly, a person's name—as a means of personal identification and of linking to a family—nonetheless concerns his or her private and family life (see, in particular, the following judgments: *Burghartz v. Switzerland* of 22 February 1994, Series A no. 280–B, p. 28, § 24; *Stjerna v. Finland* of 25 November 1994, Series A no. 299–B, p. 60, § 37; and *Guillot v. France* of 24 October 1996, *Reports of Judgments and Decisions* 1996–V, pp. 1602–03, § 21).²³

Along the same lines the European Court of Justice also agreed that the name of a person is a fundamental aspect of the identity of an individual, and therefore *prima facie* protected:

55. In addition to practical matters, which may range from the merely annoying to—in the climate of suspicion which has followed the events of 11 September 2001—the extremely serious, a person's name is a fundamental part of his or her identity and private life, the protection of which is widely recognised in national constitutions and international instruments.²⁴

It is important to emphasize that the name of a person is only one part of the right to private and family life, and that the right itself—and as a result its name “component” as well—is not absolute. For example, under the right to privacy in Article 17 of the ICCPR, state authorities can only interfere with the name or surname of a person if it is not arbitrary or unlawful; under Article 8 of the European Convention for the Protection

22. *Coeriel and Aurik*, *supra* note 21, ¶ 10.2.

23. *Case of Znamenskaya v. Russia*, App. No. 77785/01, Judgment 12 Oct. 2005.

24. *Standesamt Stadt Niebüll*, Case C-96/04, 30 June 2005. See also *Konstantinidis*, Case C-168/91 [1993] ECR I-1191; *Garcia Avello*, Case C-148/02 [2003] ECR I-11613.

of Human Rights and Fundamental Freedoms, the right to private life can only be interfered with in accordance with the law and “is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” Other treaties dealing with the concept of privacy or private life allow for similar interferences, though with at times slightly different wording or requirements.

It might seem contradictory to claim that the identity and name of a person are fundamental, and simultaneously not have a treaty provision try to circumscribe or clarify a state’s permissible restrictions to such a central aspect of human identity. The tension in a sense is perhaps unavoidable and logical: first because the issue of a person’s name was never initially intended to be covered by the right to private life; second, because, as with the right to private life itself, the exact limits of how this right may protect the name and identity of an individual will gradually take shape through the growing international jurisprudence.

In other words, while individuals may be entitled to call themselves whatever they want under the right to private life, states may also have an interest in managing the names or surnames of individuals for official and administrative purposes such as the need for clarity in identification. What happens when the interest of state authorities interferes with the name a person chooses is still a matter in flux, especially at the European level where attitudes have evolved over time, and where there are a number of contradictory positions.²⁵ The important point to keep in mind is that it is

25. This can be seen by the European Court of Human Rights evolving attitude on the issue of name change for transgender individuals in the last two decades. The European Court was not sympathetic in the 1990s to claims that a transgendered individual should be allowed to change his or her first name under the right to private life in early cases such as *Sheffield and Horsham v. The United Kingdom*, App. No. 22985/93, Judgment 30 July 1998. By 2002, there was quite a change of attitude in *Goodwin (Christine) v. The United Kingdom*, App. No. 28957/95, Judgment 11 July 2002:

90. Nonetheless, the very essence of the Convention is respect for human dignity and human freedom. Under Article 8 of the Convention in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings.

93. Having regard to the above considerations, the Court finds that the respondent Government can no longer claim that the matter falls within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention. Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, it reaches the conclusion that the fair balance that is inherent in the Convention now tilts decisively in favour of the applicant. There has, accordingly, been a failure to respect her right to private life in breach of Article 8 of the Convention.

This would lead, among others, to state authorities being required to change the name of the applicant in the country’s birth registry.

increasingly admitted that the interests of the state in the naming of individuals cannot automatically displace basic human rights such as the right to private life and others, as the following sections on the application of other human rights to the issue of human names illustrate.

C. The Prohibition of Discrimination and Names

Names are important both to the individual and to the state. Thus, it is important to understand their intertwined role in both shaping the private sense of self and identity and in reflecting and sustaining social institutions such as the state, family, and gender.²⁶

Since the 1980s, a number of decisions from international human rights bodies have added another basis for claiming that state authorities must, as a default position, use the original name of a person: it is the prohibition of discrimination in international law. Simply put, if a state allows some individuals to have their “real” name or surname without any interference registered and used by authorities, but does not allow other individuals to do the same because of a fundamental personal characteristic, then there is a denial or disadvantage which could be considered discriminatory if it is not reasonable or justified in the given context, and in light of the legitimacy of the objectives sought by authorities in rejecting the name of an individual.

Although there are a large number of personal characteristics which may be grounds for a claim of discrimination in international law, in practice, there are two types of situations in which international bodies opined that state authorities have discriminated in the names of individuals which they register and use: gender discrimination,²⁷ and racial, ethnic, or linguistic discrimination.

26. Yofi Tirosh, *A Name of One's Own: Gender and Symbolic Legal Personhood in the European Court of Human Rights*, 33 HARV. J. L. & GENDER 249, 308 (2010).

27. In its most common form, it usually occurs when men are allowed to keep and use officially their own name after marriage, but women are not. There is therefore a difference of treatment based on gender as far as the names which authorities will register and use. As with any other difference of treatment in human rights, it is then for the authorities to demonstrate that this difference of treatment is reasonable and justified. A failure to do so means it is discrimination—and a fundamental violation of international law. See, e.g., Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., art. 16(1) (g), U.N. Doc. A/34/46 (1980), 1249 U.N.T.S. 13 (*entered into force* 3 Sept. 1981) [hereinafter CEDAW]; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, art. 6, *adopted* 10 June 1998 (*entered into force* 25 Jan. 2004). Under European regulations see among others CoE, *Report on Discrimination Between Women and Men in the Choice of a Surname and the Passing on of Parents' Surnames to Children*, 16 July 1997, Doc. 7885, Parliamentary Assembly, *available at* <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=7815&Language=EN>; Recommendation 1271 (1995) on Discrimination Between Men and Women in the Choice of a Surname and in the Passing on of Parents' Surnames to Children, *adopted* by CoE Parliamentary Assembly 28 Apr. 1995, *available at* <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/tA95/EREC1271.htm>.

1. Gender Discrimination

The evolution of how states may discriminate in relation to names has been long standing and clear with relation to women.²⁸ It most commonly occurs when state authorities allow men to keep and use officially their own name after marriage, but not women. There is therefore a difference of treatment based on gender as far as the names which authorities will register and use. As with any other difference of treatment in human rights, it is then for the authorities to demonstrate that this difference of treatment is reasonable and justified and a failure to do so means it is discrimination, and thus a fundamental violation of international law.

Another example of this kind of difference of treatment in relation to names occurred in France, where, until 2000, legislation required that all children take the surname of their father. Once again, this complies with the more traditional European approach that states determine how individuals are identified for official purposes. But it raises a difference of treatment between men (fathers) and women (mothers), since even if they had the right to “a” name, children were generally not allowed to have the name of their mothers, even if this was the wish of both parents.²⁹

There has been a marked progression that is somewhat similar to what occurred in both the situations of the right to a name and the right to private life.³⁰ Initially, it was simply rejected that a woman could claim discrimination against authorities—especially in the case of the European human rights system—if she could not have her name used and recognized by state authorities in the same way as men. The very first name case of this type under the European Convention on Human Rights was for this reason deemed inadmissible. In the 1977 case *Hagmann-Hüsler v. Switzerland*,³¹ Mrs. Hagmann, a politician, wanted to retain her maiden name under

28. There are a number of articles already covering this area in greater detail, including Omi Morgenstern Leissner, *The Name of the Maiden*, 12 WISC. WOMEN'S L. J. 253–254 (1997).

29. Since 1 January 2005, the French Civil Code, arts. 311–21, allows children to register and use the family name of their father, mother, or a hyphenation of both.

30. See Heather Long, *Should Women Change Their Names After Marriage? Consider the Greek Way*, GUARDIAN, 6 Oct. 2013, available at <http://www.theguardian.com/commentisfree/2013/oct/06/women-change-name-after-marriage-greece>. The evolution is also visible in the name legislation of a number of countries. Differences of treatment between men and women in Greece after it emerged from a military dictatorship for example led to recognition of the discriminatory nature of the “male-oriented” favoritism which existed: men could keep their family names, women could not. By 1983 however, this was considered no longer acceptable in a more human rights sensitive society: legislation was adopted in 1983 which made it mandatory for all women to keep their original surnames. This was subsequently changed by a law in 2008 which allows either spouse to keep their original surnames, or in addition to add the other spouse's last name to theirs.

31. *Hagmann-Hüsler v. Switzerland*, Eur. Comm. Hum. Rts. 202 (1977).

which she was well known. For the European Commission, the issue of a common surname within a family was primarily used for identification purposes in a majority of European states. For the Commission at the time, there was no real problem in ensuring her identification, since she had the option of adding her maiden name after the name of her husband. There thus seemed to be no concern in 1977 for the entitlement of a woman to the respect of her own identity; the only real concern expressed was for ease of identification, “that is to say the spouses and their children (at least when they are minor) to be easily identifiable vis-à-vis third parties.” Even if there was a difference of treatment and a woman could not keep her original name after marriage, this did not appear to the Commission to be unreasonable at the time in the European context. The logic appeared to be that only allowing men the benefit of keeping their original surnames was “normal” and denying the same to women was not an issue as long as they could be identified easily through the names women must have under national legislation. Another early decision in 1983 essentially rejected any significance in women not being allowed to use their surnames while men could do so. In *X v. The Netherlands*,³² where the Commission again considered the difference of treatment to be reasonable and just, therefore not discriminatory under Article 14.

By the end of the 1970s however, there began a change in Europe with the recognition that the prohibition of discrimination may mean that state authorities cannot have laws that benefit men and not women in terms of the usage of surnames. In 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) already linked such differences of treatment between men and women in relation to names allowed by state authorities as issues of discrimination, with one of its provisions declaring that women and men shall also have the same rights to choose a family name.³³ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa follows the same reasoning, stating in Article 6 that equality and nondiscrimination imply that “a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname.”

By the 1990s, Europe began to fall in line—moving away from the long-standing tradition of state authorities that did not allow women to keep their own surnames when married—with what had been taking shape slightly

32. *X v. The Netherlands*, App. No. 9250/81, Eur. Comm. Hum. Rts., Dec. & Rep. 175,177 (1983). Here the European Commission simply indicated that the refusal of authorities to use a woman's original surname in a registry of voters, while men could, was of no consequence. There was no acknowledgment that a woman could have her own identity, that authorities should respect it, or that the difference of treatment between men and women might be discriminatory.

33. CEDAW, *supra* note 27, art. 16(1)(g).

earlier at the international human rights level. A number of reports and declarations of the CoE recognize that the naming practices and legislation of a state can be discriminatory, particularly on the basis of gender.³⁴ It was also clear by the 1990s that in international law, state authorities could no longer simply reject the recognition and use of a woman's own name as this is inherently antagonistic to the right of a woman to equality in relation to her individuality and identity:

24. A stable family is one which is based on principles of equity, justice and individual fulfilment for each member. Each partner must therefore have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations, as provided in article 11 (a) and (c) of the Convention. Moreover, each partner should have the right to choose his or her name, thereby preserving individuality and identity in the community and distinguishing that person from other members of society. When by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied these rights.³⁵

The wording here focuses on the prohibition of discrimination between men and women. Nonetheless, it is interesting to note that by 1994, the Committee on the Elimination of All Forms of Discrimination Against Women has language that indicates both genders should have the right to choose their own names, as opposed to having their names determined by state authorities through legislation.

Still, some European countries appear to have legislation that has not yet completely set aside the old habits and that do not completely recognize the legal need to act in a nondiscriminatory way in relation to the identity and name of a woman:

4. The Assembly recalls its Recommendations 1271 (1995) and 1362 (1998) on "Discrimination between women and men in the choice of a surname and in the passing on of parents' surnames to children." While most Council of Europe member states have in the meantime made it legal for a woman to retain her maiden name upon marriage, few have made it possible for a woman to pass on her name to her children. Forcing a woman to take her husband's name can be seen as a form of "depersonalisation" of the woman, reducing her to a "part" of the husband's family, and violating her private life in revealing her marital status

34. See among others CoE, *Report on Discrimination Between Women and men in the Choice of a Surname and the Passing on of Parents' Surnames to Children*, 16 July 1997, Doc. 7885, Parliamentary Assembly, available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=7815&lang=EN>; CoE, *Recommendation 1271 (1995) on Discrimination Between men and Women in the Choice of a Surname and in the Passing on of Parents' Surnames to Children*, adopted, Parliamentary Assembly 28 Apr.1995, available at http://www.kekidatabank.be/opac/doc_num.php?explnum_id=154.

35. CEDAW, *General Recommendation No. 21 (13th session, 1994), Equality in Marriage and Family Relations*, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

and sometimes even her marital problems to complete strangers. Similarly, the inability of women in many jurisdictions to pass on their surname—and thus part of their identity—to their children can be seen as a form of discrimination against women. It is high time that all Council of Europe member states modify their legislation in both these areas without further delay in accordance with the Assembly's recommendations.³⁶

The issue of gender discrimination in the naming preferences of state authorities is not, however, just a one-way street. There have also been cases since the 1990s where authorities allow women a surname but do not provide the same opportunity to men. In *Burghartz v. Switzerland*, men under Swiss legislation did not have the opportunity to add the surname of their wife as a family name, even though this option was available for women, and thus gave rise to a case of discrimination.³⁷ The UN Human Rights Committee also reached a similar conclusion on the basis of the application of non-discrimination in *Michael Andreas Müller and Imke Engelhard v. Namibia*, concluding that “legal security” was not a reasonable basis to deny foreign men the right to carry the surname of their wives' surname if they so choose.

The Committee, however, fails to see why the sex-based approach taken by section 9, paragraph 1, of the Aliens Act may serve the purpose of creating legal security, since the choice of the wife's surname can be registered as well as the choice of the husband's surname. In view of the importance of the principle of equality between men and women, the argument of a long-standing tradition cannot be maintained as a general justification for different treatment of men and women, which is contrary to the Covenant. To subject the possibility of choosing the wife's surname as family name to stricter and much more cumbersome conditions than the alternative (choice of husband's surname) cannot be judged to be reasonable; at any rate the reason for the distinction has no sufficient importance in order to outweigh the generally excluded gender-based approach. Accordingly, the Committee finds that the authors have been the victims of discrimination and violation of article 26 of the Covenant.³⁸

In *Losonci Rose and Rose v. Switzerland*, a foreign-born husband had adopted, for administrative reasons, the surname of his wife, and later sought to revert to his original name, an option available to Swiss women under national law. One of the noteworthy remarks of the ECtHR here is the admission that there is a growing European and international consensus that the right to equality and the prohibition of discrimination on the basis

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36. COE, Parliamentary Assembly, *Respect for the Principle of Gender Equality in Civil Law*, Doc. 11177, 6 Feb. 2007. See the confirmatory response of the Comm. of Ministers, COE Doc. 11648 of 20 June 2008, *Respect for the Principle of Gender Equality in Civil Law: Recommendation 1798 (2007)*, Reply from the Committee of Ministers.
 37. *Burghartz v. Switzerland*, App. No. 16213/90, Judgment 22 Feb. 1994, Eur. Ct. Hum. Rts., Strasbourg.
 38. *Michael Andreas Müller and Imke Engelhard v. Namibia*, Comm. No. 919/2000, U.N. Doc. CCPR/C/74/D/919/2000 (2002), ¶ 6.8.

of gender limits how states regulate and restrict the choice of a surname.³⁹ This has been reiterated by the ECtHR in a number of other cases.

The fact that married women could not bear their maiden name alone after they married, whereas married men kept their surname, undoubtedly amounted to a “difference in treatment” on grounds of sex between persons in an analogous situation. As to whether that difference in treatment could be justified, the Court reiterated first that the advancement of the equality of the sexes was today a major goal in the member states of the CoE. Two texts of the Committee of Ministers, dated 1978 and 1985, called on the states to eradicate all discrimination on grounds of sex in the choice of surname. That objective could also be seen in the work of the Parliamentary Assembly, the European Committee on Legal Co-operation, as well as in developments at the United Nations regarding equality of the sexes.⁴⁰ Rejecting the argument that “family unity” requires the exclusive use of the husband’s surname, the ECtHR concluded that the “the obligation on married women, in the name of family unity, to bear their husband’s surname—even if they can put their maiden name in front of it—has no objective and reasonable justification.”⁴¹

In the twenty-first century, there is now a widespread consensus under all regional and international human rights systems, including in Europe, that to impose more demanding conditions on women than on men for the use of a wife’s surname as family name than for a husband’s surname is generally unreasonable, and therefore discriminatory and in violation of the basic human right to equality.⁴²

2. Racial, Ethnic, or Linguistic Discrimination

The right to a name is linked intrinsically to recognition of personal identity, which also implies belonging to a family and to a community.⁴³ Recently, there has been a growing number of cases in which a linkage has been made between the right of an individual to have his or her own name recognized and used by state authorities and discrimination on grounds such as race, ethnicity, or language, much in the same way as occurred in the case of gender discrimination. Simply put, if authorities permit individuals from one or more racial, ethnic, or linguistic group to use their own names for official purposes, but deny the same treatment to others this would be a difference of treatment based on a racial, ethnic, or linguistic characteristic

39. *Losonci Rose and Rose v. Switzerland*, App. No. 664/06, Judgment 9 Nov. 2009, Eur. Ct. Hum. Rts., ¶ 47.

40. *Ünal Tekeli v. Turkey*, App. No. 29865/96, Judgment 16 Nov. 2004, Eur. Ct. Hum. Rts.; *Tuncer Güneş v. Turkey*, *supra* note 9.

41. *Ünal Tekeli v. Turkey*, *supra* note 40, ¶ 66.

42. *Müller and Engelhard*, *supra* note 38.

43. *Ernestina and Erlinda Serrano Cruz v. El Salvador*, Judgment, Inter-American Ct. Hum. Rts., 1 Mar. 2005.

which would be considered discriminatory unless authorities can prove it to be reasonable and justified under international human rights standards.

Most of these situations have involved the UN Committee on the Elimination of Racial Discrimination (CERD). On a number of occasions after the late 1990s, it indicated in its comments on periodic state reports that legislation which forced new citizens to adopt a name or surname in the official language of the country was racially discriminatory.⁴⁴ By 2004, its views on the matter were more firmly established. In one of its general comments for example, the CERD indicated that, in its view, “practices that deny non-citizens their cultural identity, such as legal or de facto requirements that non-citizens change their name in order to obtain citizenship” would appear to be a form of racial discrimination.⁴⁵

In particular, the CERD targeted two states by naming legislation that it deemed discriminatory—Japan and Iceland—both of which subsequently changed their laws to comply with the CERD’s recommendation. The first case focused on the Korean minority in Japan, many of whom were long-standing residents that had not sought citizenship. They (and anyone else obtaining Japanese citizenship) had to change their names to a Japanese name. The Committee indicated that it considered “that the name of an individual is a fundamental aspect of the cultural and ethnic identity” and therefore Japan needed to avoid the practice as it could raise issues of racial discrimination.⁴⁶ The case of Iceland is similar; an individual who acquired Icelandic citizenship was forced by authorities to adopt a new Icelandic name, modifying their original name so that it became Icelandic, or by adding an Icelandic first name to his or her previous first name(s). This too was deemed to be potential discrimination on the basis of race—as ethnic Icelanders were allowed by the government to have their own names recognized and used by authorities, but not others who had different racial (and ethnic and linguistic) backgrounds.⁴⁷

It appears that the CERD has taken the general position that forcing individuals to adopt a name in or “sounding like” the official language is a racial, ethnic, or linguistic difference of treatment that is unreasonable and unjustified, and therefore discriminatory. For this reason, the CERD tends to

44. It has to be explained that the definition of racial discrimination under International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 21 Dec. 1965, G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., art. 1, 660 U.N.T.S. 195 (*entered into force* 4 Jan. 1969), *reprinted in* 5 I.L.M. 352 (1966) essentially is quite expansive, and would essentially include most ethnic or linguistic minorities since it covers “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin.”

45. CERD, *General Recommendation 30, Discrimination Against Non-Citizens*, 64th sess., Mar. 2004, ¶ 37.

46. *Concluding Observations, CERD: Japan*, 27 Apr. 2001, CERD/C/304/Add.114, ¶ 18.

47. *Summary Record of the 1441st Meeting: Iceland, Jamaica*, 14 Mar. 2001, CERD/C/SR.1441.

question closely governments that do not seem to allow some individuals to keep their own names in their own language. In 2010 it stated in relation to Morocco and the Amazigh minority, that “all citizens shall have the right to register the names of their choice, including Amazigh names.”⁴⁸

CERD has thus moved to the view that in order for governments to respect the prohibition of racial discrimination, individuals must be allowed by authorities to register and use their own names, even if it is not, or does not sound like, a name in the official language. In effect, it would seem that CERD considers that racial (and ethnic or linguistic) minorities are entitled to have authorities recognize and use their names, in their language.

3. The Right of National Minorities (and Indigenous Peoples) to their own Names

*[L]e nom, en tant qu'élément d'individualisation principal d'une personne au sein de la société, appartient au noyau dur des considérations relatives au droit au respect de la vie privée et familiale.*⁴⁹

The CoE has essentially been moving in the same direction during much of the same period as the CERD as has to a degree the Inter-American Court of Human Rights, recognizing—at least for some individuals—a right to the recognition and use of one's own name through specific treaties dealing with the rights of national minorities (and indigenous peoples such as the Sami in Nordic countries where they are a minority) or obligations in relation to regional or minority languages. These rights are enumerated in the provisions of the Framework Convention for the Protection of National Minorities⁵⁰ (Framework Convention) and the European Charter for Regional or Minority Languages,⁵¹ the former being a human rights treaty and the latter a treaty for the promotion and protection of linguistic diversity. These two treaties, and in particular the Framework Convention, emerged in the

48. *Concluding Observations CERD: Morocco*, CERD/C/MAR/Q/17-18, 8 July 2010, ¶ 12.

49. *Losonci Rose and Rose v. Switzerland*, *supra* note 39, ¶ 51. Authors' translation: “A name, as one of the main markers of individuality for a person within society, belongs to the core considerations concerning the right to respect for private and family life.”

50. Framework Convention for the Protection of National Minorities, *opened for signature* 1 Feb. 1995, Council of Europe Parliamentary Assembly, art. 11(1), 2152 U.N.T.S. 243, Europ. T.S. 157 (*entered into force* 1 Feb. 1998) [hereinafter Framework Convention].

The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

51. The European Charter for Regional or Minority Languages, *opened for signature* 5 Nov. 1992, Council of Europe, art. 10(5), Europ. T.S. No. 148 (*entered into force* 1 Mar. 1998). “The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.”

1990s at the time of fairly widespread and increasing acknowledgment that individuals who belong to “national minorities” are entitled to the recognition and use of their own names (first name and surname) by state authorities “in the minority language” “according to modalities provided for in their legal system.”⁵² There is, therefore, a particular context which explains the intent and scope of the provisions in these treaties. They both reflect the jurisprudence and a growing consensus towards the end of the twentieth century, whether based on human rights standards such as the right to a name, the right to private life, or the commitment to nondiscrimination or the need to protect linguistic diversity, that *prima facie* states should not prevent individuals from having and using their own names. Minorities are those most likely to be denied having their names recognized and used for official purposes by state authorities. It is not a surprise that the absence of any specific right to one's own name in the European context be addressed in distinct legal instruments.

In addition, it is no coincidence that during the 1990s, a number of non-binding documents dealing with minority or linguistic rights, such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the Oslo Recommendations regarding the Linguistic Rights of National Minorities, refer to the rights of minorities to have their own names, in their own language, recognized by authorities. The same right to the name of a person in his or her own language similarly took shape in more recent non-binding documents dealing with indigenous peoples, such as the UN Declaration on the Rights of Indigenous Peoples.⁵³

It is interesting to note that the drafting history of Article 11(1) of the Framework Convention shows there was never any disagreement over the

52. The reference to modalities in Article 11(1) refers to the practical impossibility of describing exactly how this can be implemented to address very different situations, especially in the case of the use of different alphabets, it was thought better to leave the matter according to a country's “modalities.” See Ad Hoc Committee for the Protection of National Minorities (CAHMIN), *Explanatory Report to the Framework Convention for the Protection of National Minorities*, CAHMIN, art. 11, ¶ 68 (1995) [hereinafter CAHMIN *Explanatory Report*]:

68. In view of the practical implications of this obligation, the provision is worded in such a way as to enable Parties to apply it in the light of their own particular circumstances. For example, Parties may use the alphabet of their official language to write the name(s) of a person belonging to a national minority in its phonetic form. Persons who have been forced to give up their original name(s), or whose name(s) has (have) been changed by force, should be entitled to revert to it (them), subject of course to exceptions in the case of abuse of rights and changes of name(s) for fraudulent purposes. It is understood that the legal systems of the Parties will, in this respect, meet international principles concerning the protection of national minorities.

53. UNDRIP, *supra* note 10, art. 13(1): “Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”

inclusion or general wording of this provision, considering that “the right to bear one’s own name in the minority language . . . was of great importance.”⁵⁴ The only concern was over the practicalities involved in upholding this right. At one point, it was thought that there should be specific reference to a possible paragraph with respect to the changing of one’s own name, “particularly to cover those situations where family names other than the minority name have been imposed by the public authorities.”⁵⁵ This additional paragraph was not included in the end, it being preferable to explain such detailed implementation of the paragraph in the Explanatory Report.⁵⁶

There has been similarly little debate or areas of disagreement when the Advisory Committee of Experts examined country reports to determine how parties have been implementing this right. As with other noncontroversial provisions, a number of parties to the Framework Convention went to some length in their reports to demonstrate that members of national minorities are entitled to use and have their name and surname recognized in their own language.

In general, the Advisory Committee has not commented on this treaty provision unless there has been a definite problem.⁵⁷ In one case, for example, the Committee focused on the situation of Hungary because of the apparently small number of individuals who actually sought to have their names or surnames used and recognized in their minority language.⁵⁸ The Committee of Ministers also picked up on this observation, going further than the report of the Advisory Committee in indicating that Hungary had to ensure that individuals were truly and completely free from obstacles or pressure on the use and recognition of their names in their own language in compliance with its legal obligations:

The Committee of Ministers *concludes* that the actual use made of legal possibilities for the use and the official recognition of the patronym and first names in the minority language, for bilingual signs with the names of settlements, streets, public offices and companies undertaking public services seems rather limited. It *recommends* that Hungary review this situation in order to ascertain

54. Preparatory Committee, CAHMIN, 3rd mtg., CAHMIN (94) 13, Meeting Report (1994), ¶ 20, available at <http://coe.archivalware.co.uk/awweb/main.jsp?flag=browse&smd=1&awdid=1>.

55. Steering Committee for Human Rights (CDDH), Final Activity Report of the CDDH for the Attention of the Committee of Ministers, CDDH (93) 22, (1993), available at <http://coe.archivalware.co.uk/awweb/pdfopener?smd=1&md=1&did=488166>.

56. CAHMIN *Explanatory Report*, *supra* note 52, ¶ 68.

57. See Advisory Committee on the Framework Convention for the Protection of National Minorities, Thematic Commentary No. 3: The Language Rights of Persons Belonging to National Minorities Under the Framework Convention, ACFC/44DOC(2012) 001rev, Strasbourg, 5 July 2012, ¶¶ 61–63. The *Commentary* is actually very brief, and not particularly helpful, on this provision.

58. Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Hungary, ACFC/INF/OP/I (2001) 004, 2000, ¶ 37.

whether this practical state of affairs is the result of the exercise of free choice or whether there are other impediments.⁵⁹

In a sense, however, this recommendation of the Committee of Ministers sets the tone as to the way Article 11(1) should be understood and applied. National minorities must not be impeded, practically speaking, by authorities in terms of the possibility of having to officially recognize and use their names in their own language.

The occasions which constitute breaches of this legal obligation were not numerous, but occurred where state authorities did not allow individuals to “use their own name” in their own language. This was because of legislation or practices by authorities that involved changes in spelling of names (usually because of requirements relating to the official language of a country), transliteration of names, and alphabet difficulties; cultural differences and surnames; and obstacles to correcting the name of an individual after forced changes by authorities to his or her name or surname.

These and other restrictions that can violate the right of an individual under the Framework Convention to have his name used and recognized will be considered in greater detail in the next section.

III. STATE RECOGNITION AND USE OF THE NAMES OF A PERSON: RESTRICTIONS AND THEIR LIMITS

[A] person's name is a fundamental part of his or her identity and private life, the protection of which is widely recognised in national constitutions and international instruments.⁶⁰

From an international human rights point of view, as noted earlier there are at least four potential areas of violation which can occur when state authorities do not recognize or use an individual's own name. When authorities impose a particular form or spelling of a name or surname, the following situations arise:

- discrimination, on the grounds of race, ethnicity, language, religion or even gender;
- unjustified interference in private or family life;
- a breach of the right to a name; or
- a violation of the rights of linguistic minorities to use their own language amongst themselves.

59. *Id.* at 15.

60. Standesamt Stadt Niebüll, *supra* note 24.

Whatever the reasons for the initial hesitation, human rights in international and regional law⁶¹ are neither monolithic nor unchanging. On the one hand, early human rights treaties did acknowledge the need to protect, though to an undefined degree, the name of an individual. On the other, even the relatively modest form of the right of persons to a name that was initially received by treaties has been evolving in human rights law—as have other rights.⁶²

Whatever the legal basis for individuals claiming that authorities must recognize and use their own name, whether under the right to a name, the right to private life, the prohibition of discrimination, or the right of a minority or indigenous person under treaty, none of these rights signify that any restriction or interference by state authorities are impermissible.

While it is true that in the private sphere individuals can call themselves anything they want (and some individuals can choose some rather surprising names), the situation is nevertheless different as far as the official usage of a person's name by state authorities. Simply put, there are a number of reasons and interests which governments have put forth in order to not adopt an individual's own name, and instead recognize and use a different name for official purposes:

1. Names are considered offensive, inappropriate (including as to gender, or against the interests of a child), or obscene.
2. Names are written in a different script.
3. Names are not in the official language of a state.
4. Names relate to the status of an individual (marital, social, even aristocracy).

Before the emergence of human rights in international law, it could be said that most states could restrict and direct the registration and use of the names of their citizens, though common law jurisdictions tended to avoid this because of a prevailing *laissez faire* attitude in such societies. This was not necessarily the case in civil law states from Europe and a few other countries.

However, the evolution of human rights in recent decades makes it clear that state authorities do not have *carte blanche* in relation to the recognition and use of the names of individuals, especially through the application of the right to a name, the right to private life, the prohibition of discrimination, or the right of a minority or indigenous person under treaty. State authorities are not permitted to simply impose their own name preferences, whether

61. The reference to regional law refers specifically to regional human rights treaties and mechanisms in Europe, the Americas, and Africa.

62. A classic international law example of this is the right of self-determination which was initially limited to entire populations of a state, and was gradually interpreted to encompass also entire populations of non-self-governing territories. It appears now to be evolving to cover indigenous peoples, though it seems with a more restricted meaning as to the content of self-determination for this particular group.

it involves an official language, religion, or culture, on what is today universally acknowledged as a central aspect of the identity of an individual.

All of the various possible human rights standards previously mentioned are a move toward the acceptance, though slightly more timidly in the case of the right to private life, that individuals are generally entitled to freely choose their name or surname, and generally to have these recognized by authorities.

It is not possible to go into detail for each of the main areas in which authorities may refuse to use or recognize the name of a person. Therefore, issues surrounding individual names and language differences will serve to demonstrate how human rights have begun to impact practices in relation to official languages, particularly though not exclusively in some European countries, which would appear to be problematic in light of international legal obligations.

A. The Names of Individuals and Official Languages

Cases that involve the names of individuals in languages different from the official language of a state, or the language(s) favored and used by authorities are increasingly raised as claims of violations of human rights. Though not often admitted, there is no doubt that there is still a tendency to seek and promote national unity and identity by “eliminating the other” and by not allowing names that are not in the official language. Such practices against indigenous peoples and minorities have largely disappeared in other parts of the world. This also explains the absence of a right to a name, even for children, in European treaties, where this has, by now, been recognized internationally and in other regions as described earlier.

Nevertheless, it is striking to see the significant number of cases involving minorities in Europe who are still not allowed to use or have their own names recognized because they are not in the official language. There tends to be four different types of cases which have been raised by individuals claiming they are not allowed by authorities to use their own names.

1. Names involving letters
2. Names “sounding different” from, or not in, the official language
3. Names with letters containing diacritics
4. Names with suffixes

The two first categories will be dealt with in this article, as they are more often involved in legal concerns.

B. Cases of Names Using “Missing Letters”

There have been a number of situations where authorities have argued they cannot use or register the actual original names of individuals because these contain letters which do not exist in the official language. Since these letters are said not to exist in the official language of a country, so goes the argument, authorities claim they cannot recognize or use names spelled with any of these. These names can only use letters which are formally acknowledged as part of the official language.

Though this may sound logical, it is also misleading, at least in the case of countries such as Lithuania and Turkey. When dealing with the registration of names or surnames of minorities, authorities are not asked to register or use these names in the official language of the state; they are being asked to spell the names of an individual in its original language. In Lithuania and Turkey, such requests are likely to involve languages such as Polish in the former, and Kurdish in the latter, the largest linguistic minorities in each respective country. Both of these minority languages contain letters which authorities claim do not exist in the official languages of the two countries, although in practice this is only true for citizens, since both countries' authorities do not apply the same rules to foreign names. The issue is one which can be presented by asking whether there is an obligation to use the original spelling of the individuals' names containing “non-existing” letters, or whether the name of an individual must be limited to letters recognized in the official Turkish language or Lithuanian language. In the latter case, is there potentially a breach of the right to private life or discrimination, or a violation of the Framework Convention's clear obligation that the names of national minorities must be written and used by authorities in their own language, to give a very simple example?

The issue is not one of transliteration but of transcription,⁶³ because both Kurdish and Turkish on the one hand, and Polish and Lithuanian on the other, happen to use the same alphabet (Latin). However, there are statements made by state authorities which make it sound as if either (a) the names of individuals (who are citizens) that are in a different language should therefore not be recognized or used by authorities in that country; or (b) that it is impractical to recognize or use names with “nonexistent” letters. The first line of argument will be examined when dealing with language differences generally. As for the second line of argument, it is interesting to note the comment of Turkish Prime Minister Recep Tayyip Erdoğan announcing in September 2013 that authorities would soon register and use

63. As a general proposition, transliteration is used when words are written in the same script, such as Latin, to represent as closely as possible the letters or characters used in different languages such as German, French, or Latvian. In the case of a transcription, this refers to changing words from one script to another, such as Greek script to the Latin script, or Cyrillic to Chinese, and will result in the sounds between as faithful as possible to the word in its original language.

Kurdish-language names containing the “nonexistent” letters “q,” “w,” or “x” in Turkish. The announcement made no reference to the sudden mysterious appearance of these letters which would be added to the Turkish language, but only that it would no longer be illegal for authorities to use them for the names of Turkish citizens.

The reason the Prime Minister phrased the announcement in this way is straightforward: while these three letters may not be used in the Turkish language itself, they are still widely used by everyone in Turkey including authorities on a daily basis because there are in fact no script or alphabet differences: both Kurdish and Turkish use the Latin script. In addition, whenever authorities refer to or write foreign names (except those of the Kurdish and other minorities who are citizens) or words in other languages, they would as a matter of course use any one of the “missing” letters in the Turkish language. This is because, as a language that uses the Latin alphabet, these letters in fact exist and are frequently used in writing in Turkish, though not necessarily when writing words in the Turkish language itself. Every time the Prime Minister, President, or any government employee of Turkey would use the Internet, they would type in a “www” address—even though officially these letters did not exist in Turkish. Corporations, foreign, but also some domestic, would have corporate names and signs in Istanbul or Vilnius and elsewhere which might contain one of these letters.

To put it in simple terms, the letters q, x, or w are used everywhere by everyone in Turkey even though officially they did not exist. In fact, there was only one place they did not “exist”: it was only in practice forbidden to use them in relation to the registration or use of the names of Kurdish-speaking or Polish-speaking citizens (and a few other minorities). Even computer keyboards in Turkey contain these letters, as the following image shows:



(Source: <http://www.turkishlanguage.co.uk/alphabet.htm>)

Thus there is no linguistic revolution in Turkey with the 2013 announcement from the Prime Minister because there was no practical difficulty in relation to the letters q, w, or x being used or recognized by authorities. It was rather an issue of whether the Turkish state would allow citizens to freely and without restraint register and use Kurdish language names—not names in the Turkish language—with such letters.

While Turkey has decided to lift the prohibition on the use of Kurdish language names, it seems Lithuania remains the only European country with such a restriction as to limiting the use of three letters of the Latin alphabet, and only in the case of its citizens. As in Turkey, the letters q, w, and x are used daily by almost everyone in Lithuania, including authorities, whenever individuals write words in a non-Lithuanian language or use the Internet. Citizens of other countries who subsequently become residents or citizens of Lithuania can maintain their names, even if they have one of these letters; signs with the names of many corporations and businesses, both foreign and domestic have these letters; uses the airport in Vilnius shows the public “taxi” sign; and most Lithuanian language computer keyboards show.



(Source: http://qnx.puslapiai.lt/en_ltkbd.html)

As in Turkey (until 2013), there is, in effect, only one place and category of people in Lithuania where it is illegal to use these letters: minorities who are citizens and whose names are not in the Lithuanian language are not allowed to register their names or have them used by authorities with the letters q, w, or x.

One recent case in Europe illustrates some of the challenges that still seem to affect European institutions in relation to the names of individuals which are not in the official languages of a state in so-called situations of missing letters.

There was a fairly recent decision of the European Court of Justice which dealt with the unusual situation of a married couple living in Belgium with

family names differing in spelling because of the absence of certain letters and diacritics in the official language of one of the spouses' native countries.⁶⁴

The wife is a member of the Polish minority in Lithuania, whose Polish first and surname is "Małgorzata Runiewicz." Her name was registered and changed by authorities from the Polish language to the Lithuanian language, and became "Malgožata Runevič." She married in Vilnius a Polish national, Łukasz Paweł Wardyn. On the marriage certificate, "Łukasz Paweł Wardyn" was transcribed as "Lukasz Pawel Wardyn." The name of his wife appears in the same form in a non-Polish, Lithuanized version as "Malgožata Runevič-Vardyn." Since she is a Lithuanian citizen, her name is considered by national authorities to be in the Lithuanian language, and therefore the rules and letters of the Lithuanian language be used exclusively. Since "w" does not exist officially in the Lithuanian language, the surname of her husband for her is changed unilaterally from Wardyn to Vardyn, even though the name is actually Polish. It seems therefore that the names of Lithuanian citizens must all be "Lithuanized" to a certain degree, while bizarrely, since Łukasz Wardyn is not a Lithuanian citizen, his Polish surname on the same marriage certificate is left unchanged and officially keeps his original name with what is supposed to be a letter that does not exist in Lithuania. For the husband, "Wardyn" is treated as a Polish language name; because it is not a name in the Lithuanian language, thus it is permissible for authorities to use the nonexistent letter "w." There is therefore a rather unique situation where in the same legal document the same Polish surname is spelled in two different ways: while a non-Lithuanian citizen is entitled to keep his original name in his own language (in Polish, "Wardyn"), his wife who is a citizen can only have a Lithuanized surname ("Vardyn") as if it is in the Lithuanian language—even if it is actually a Polish name and therefore not in the Lithuanian language at all.

The European Court of Justice is, however, not a human rights court, and there is no right to a name in the treaties of the European Union or any general prohibition of discrimination.⁶⁵ Although it is able to deal with matters which, for example, involve breaches of freedom of movement or discrimination between citizens of the Union, these issues were not obvi-

64. Malgožata Runevič-Vardyn, Łukasz Paweł Wardyn v. Vilniaus Miesto Savivaldybės Administracija, Lietuvos Respublikos Teisingumo Ministerija, Valstybinė Lietuvių Kalbos Komisija, Vilniaus Miesto Savivaldybės Administracijos Teisės Departamento Civilinės Metrikacijos Skyrius, Judgment C-391/09, Eur. Ct Just., 12 May 2011. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62009CJ0391>.

65. The main EU directive against discrimination is Council Directive 2000/43/EC, Implementing The Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin, art. 1 (29 June 2000): "The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment." Discrimination on the ground of religion or language, among a number of others, is not prohibited.

ously present in the Wardyn case. It is partially for these reasons that the Court of Justice largely dismissed the arguments which were presented. While recognizing that Lithuania had changed the spelling of Wardyn's name (or more accurately that of his wife), the Court was not convinced that this would have any significant impact on Wardyn's freedom of movement as a citizen of another EU state. The Court also largely refused to deal with the question of whether this affects the identity or right to private life of the married couple, indicating that national courts need to determine such matters since EU treaties and legislation (as opposed to human rights treaties) are not designed to address these directly, or unless serious consequences to treaty obligations such as freedom of movement can be established:

If it is established that the refusal to amend the joint surname of the couple in the main proceedings, who are citizens of the Union, causes serious inconvenience to them and/or their family, at administrative, professional and private levels, it will be for the national court to decide whether such refusal reflects a fair balance between the interests in issue, that is to say, on the one hand, the right of the applicants in the main proceedings to respect for their private and family life and, on the other hand, the legitimate protection by the Member State concerned of its official national language and its traditions.⁶⁶

A few other cases involving missing letters have also been before the ECtHR. The ECtHR has tended to accept uncritically the argument presented by authorities that these letters "do not exist" by invoking the doctrine of "margin of appreciation." Unfortunately, the ECtHR has essentially stepped away from determining whether there is a human rights violation in these cases, indicating that "it is . . . for . . . authorities—not the Court—to assess the true situation."⁶⁷

On some occasions the ECtHR has even confused—and incorrectly applied—situations where a phonetic transcription should have been used when dealing with different scripts, and in the opposite context of languages using the same alphabet where it is the transliteral and not the phonetic approach which ought to have been used.⁶⁸ Additionally, the ECtHR appears to be hesitant to address any challenge to the official language policy of a country.

66. *Wardyn*, *supra* note 64, ¶ 91.

67. *Mentzen alias Mencina v. Latvia*, App. No. 71074/01, ECtHR, Admissibility Decision 7 Dec. 2004.

68. *Kemal Taşkin et autres v. Turquie*, Judgment 2 Feb. 2010, App. No. 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05, 45609/05, ¶ 68. Unfortunately, the ECtHR in *Taşkin* misunderstood here the application of Article 2 of the Berne Convention: since both Kurdish and Turkish languages use the same alphabet, it is the literal and not phonetic approach that should have been referred to. Even if certain letters used in Kurdish names do not exist in the Turkish language, they do exist in the Latin alphabet used by Turkish authorities. See Berne Convention for the Protection of Literary and Artistic Works (1886), available at http://www.wipo.int/treaties/en/text.jsp?file_id=283698.

It even refers to the need for “linguistic unity” in the administration,⁶⁹ or the protection of the official language of the state,⁷⁰ as sufficient reasons for not allowing individuals to have their names in a minority language—though once again claiming this is within a state’s margin of appreciation.

Still, the ECtHR hesitation is not being followed in other human rights mechanisms such as the UN Committee on the Elimination of Racial Discrimination or the UN Human Rights Committee. Their general approach in relation to countries that have in the past tended to only register or use names which were in the official language (such as Iceland and Japan) has been to consider that these countries were in violation of the right to private life or were discriminatory.

Finally, in the context of Europe, the refusal of authorities to register or use names because of claimed “non-existing” letters would additionally be in breach of Article 11(1) of the Framework Convention in the case of different languages sharing the same script.

A few additional clarifications are needed to properly understand what is involved when dealing with differences of scripts and alphabets. For one thing, there are different writing systems or scripts in the world, and not all of them are alphabets.⁷¹

There are five alphabets (Greek, Latin, Cyrillic, Georgian, and Armenian) native to and used by authorities in Europe. There may be more scripts that are used privately by the continent’s inhabitants, be they Arabic, Chinese, Ethiopian, Jewish, etc.

One mistake that occasionally occurs, even at the ECtHR, is to confuse the distinct letters used in a particular language as meaning different “alphabets” are involved. For example, German has the letter “ß” while there are many distinct letters in the Icelandic language (such as “ð”). At times it seems the ECtHR portrays these languages as different alphabets or scripts.

This is not the case. Almost all Western European languages use the same alphabet, Latin, though some have slight variations in the existence of particular letters. Other languages may not use certain letters, such as in Lithuanian (q, w, x), Portuguese (k, w, y until 2009), and Turkish (q, w, x until 2014),⁷² while many others have letters with distinct diacritics. All

69. *Kemal Taşkin, supra* note 68, ¶ 78.

70. *Kuharec alias Kuhareca v. Latvia*, App. No. 71557/01, 7 Dec. 2004.

71. An alphabet contains separate letters for both consonants and vowels. Arabic and Hebrew scripts are not alphabets but abjads, scripts which contain symbols for consonants only or where the vowels may be written with diacritics. The Chinese script is not an alphabet either, but is known as a logographic writing system.

72. The use of these letters was to be legalized as part of Turkish Prime Minister Recep Tayyip Erdoğan’s Democratization Package, 30 Sept. 2013. See *What Does Erdogan’s Democratization Package Offer Kurds, Minorities?*, ALMONITOR, 30 Sept. 2013, available at <http://www.al-monitor.com/pulse/originals/2013/09/democratization-package-kurds-turkey-minorities.html>.

these involve different languages, all of them use the Latin script, but with a few distinct letters with or without diacritics.⁷³

Generally speaking, what has emerged from the small number of cases that have considered the issues of distinct scripts are the following three approaches to address different circumstances:

1. For practical reasons, state authorities can not be forced to use a script different from the one (or more) in official use in a country in writing the name of a person, as long as this is nondiscriminatory. The use of more than one script could be required where it is reasonable and justified.⁷⁴
2. In the case of a name written in a different script (such as in the case of the Greek script and the Latin script), that name must be transcribed by authorities, i.e., written in the state script so as to be phonetically faithful as possible to the way the name sounds in the original script.⁷⁵
3. Where the name or surname of a person is in the same alphabet (as with Kurdish, Turkish, Polish, and Lithuanian as described previously) as the official language used by state authorities, the transliteration method must be used, and the name or surname reproduced must be unchanged in the letters used.⁷⁶

The above approaches are also retained and reflected in Article 11(1) of the Framework Convention which refers to the use of a name and surname of a national minority by authorities “in the minority language”; the Explanatory Document of the Framework Convention adds in relation to this provision that “[p]arties may use the alphabet of their official language to write the name(s) of a person belonging to a national minority in its phonetic form,” meaning in other words transcribed. In the case of names written in different scripts (as in Greek and Latin, or Cyrillic and Georgian),⁷⁷ the

73. A diacritic is a mark added to a letter to change its sound (in Spanish, ñ; French, é; German, ü; Polish, ł, etc.).

74. CAHMIN *Explanatory Report*, *supra* note 52, ¶ 68.

75. *Mentzen*, *supra* note 67. “The most common method, however, is phonetic transcription, the aim of which is to reproduce as faithfully as possible the pronunciation of the name concerned in the language of origin.” See also *Christos Konstantinidis v. Stadt Altensteig-Standesamt and Another*, Case C-168/91, Court of Justice of the Eur. Comm., 30 Mar. 1993. In *Konstantinidis*, the Court found a breach of the prohibition of discrimination on the ground of nationality for a Greek national to be obliged to use, in the pursuit of his occupation in another member state, a transliteration of his name by authorities which modified its pronunciation to the point that it might potentially be confusing.

76. *Konstantinidis*, *supra* note 75.

This rule does not apply when the original form of the surname is written in the same alphabet as that in which the document is to be drawn up. The Court observes that the vast majority of the member States of the Council of Europe whose official language or languages use the Latin alphabets have opted for a simple literal reproduction of the name as it is written in the language of origin, even if the difference in phonetic value ascribed to certain characters in the two languages is liable to give rise to difficulties and misunderstandings over pronunciation. In other words, in such cases it is the written form and not the pronunciation of the name that takes precedence.

77. Framework Convention, *supra* note 50, art. 11(1).

indirect implication is that names written in the same script as the official language should be transliterated. Nonbinding documents dealing with the issue of names and differences of scripts confirm that this is the approach to be followed by state authorities.⁷⁸

The matter of transcriptions has been raised directly under the Framework Convention on a few occasions. Albania adopted an approach accepted by the Advisory Committee since it officially attempts to recognize and register names "according to their phonetic pronunciation on the basis of the orthography of the Latin alphabet," where the names of individuals were initially only in Cyrillic.⁷⁹ Thus, while the Advisory Committee acknowledges the practical necessity for authorities to (usually) use a single alphabet for official documentation (Latin in this particular case) as opposed to private documents,⁸⁰ state parties to the Framework Convention still have the treaty obligation to respect the name or surname in their minority language. Consequently, in the case of a person's name in a different script that does not share the Latin alphabet the name should be phonetically as close as possible to the official script.

While the Albanian approach to following phonetic pronunciation by transcription sufficiently complied with the requirements of Article 11(1), the Advisory Committee also noted individual complaints in incidents where some members of a national minority were forced to use an Albanian version of their patronym by local authorities. Such incidents constituted noncompliance with the obligations of the Framework Convention according to the Advisory Committee, and the Albanian authorities therefore had to take steps to "ensure that all civil servants [were] aware of the need to respect this right to use, and have official recognition of, one's patronym in the minority language."⁸¹

The issue of transliteration or transcription and script differences is unfortunately sometimes confused with the situation of different letters from languages all sharing the same script (such as French, German, Eng-

78. Oslo Recommendations, *supra* note 11, at 14. The Explanatory Notes to the Oslo Recommendations Regarding the Linguistic Rights of National Minorities 14 (1998), available at <http://www.osce.org/hcnm/67531?download=true>.

For example, public authorities would be justified in using the script of the official language or languages of the State to record the names of persons belonging to national minorities in their phonetic form. However this must be done in accordance with the language system and tradition of the national minority in question.

79. Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Albania, ACFC/INF/OP/I (2003) 004, 2002, ¶ 54. See also Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Lithuania, ACFC/OP/II(2008)001, 2011, ¶ 107.

80. This is implied in the Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, 2003, ¶ 58, among others.

81. *Id.* n.9, ¶ 55.

lish, Lithuanian, Turkish, etc. all using the Latin alphabet). For the former involving different scripts, the general approach from the existing human rights cases and documents is that authorities must apply a “phonetic transcription . . . to reproduce as faithfully as possible the pronunciation of the name concerned in the language of origin.”⁸² For the latter, it should be the opposite: when dealing with two languages both using, for example, the Latin alphabet, such as with Kurdish and Turkish or Polish and Lithuanian, even though they have a few different letters and diacritics, authorities must adopt a transliteration, meaning “a simple literal reproduction of the name as it is written in the language of origin” even if this could mean the name could sound different in the official language since in the case of a shared alphabet “it is the written form and not the pronunciation of the name that takes precedence.”⁸³

C. Names “Sounding Different” From, or Not in, the Official Language

It now seems clear that it could constitute racial (and ethnic and linguistic) discrimination in international human rights systems when a government that only allows the registration and use of names in the official language of a country, or names that sound similar, and thus excludes the recognition or use of the names of individuals in other languages. This has been the position of a number of UN rights committees in relation to Iceland and Japan. Indeed, many countries in recent years have moved away from only allowing names in the official language, a phenomenon linked to greater respect by authorities for the identity of individuals, but which is also a consequence of the growing movement of people within Europe and as part of globalization.

It is also clear that both Article 11 of the Framework Convention and Article 10 of the European Charter for Regional or Minority Languages require that names in national minority languages must be recognized and used, and that authorities cannot require that these names be “converted” into an “official language sounding” name. This was most directly addressed in *Leonid Raihman v. Latvia*,⁸⁴ where the author was a member of the Russian-speaking and Jewish minorities of that country, though the matter was dealt with under the right to private life in international law.

Born in 1959 when Latvia was part of the Soviet Union, Leonid Raihman’s name and surname were registered in their traditional Russian and Jewish forms (Leonid Raihman). On his becoming a citizen of the now inde-

82. *Mentzen*, *supra* note 67.

83. *Id.*

84. *Leonid Raihman v. Latvia*, Communication No. 1621/2007, 28 Oct. 2010, CCPR/C/100/D/1621/2007, available at <http://www1.umn.edu/humanrts/undocs/1621-2007.html>.

pendent Latvia in 1998, both his name and surname were changed by state authorities to Leonīds Raihmans so that, according to Latvian grammar rules, they “sound” Latvian, as opposed to sounding Russian or Jewish. This was a change that he did not consent to. He was able to show how the refusal of the Latvian government to recognize his Russian Jewish name and surname led to a variety of interferences with his enjoyment of the right to private life. He explained that he could not book a hotel room, he had trouble with financial transactions, and he experienced delays at immigration controls, if he insisted on using his name or surname in its original form (which was the way his name appeared on his passport), as opposed to the “official name” imposed upon him by authorities and appearing in the first part of his passport. The UN Human Rights Committee concluded that:

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. 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] 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.⁸⁵

In *Coeriel and Aurik v. The Netherlands*,⁸⁶ where national authorities refused the applicants permission to change their surnames to Hindu surnames, the Human Rights Committee clearly established that a person's name, including the power to change it, falls within the realm of privacy:

The Committee is of the view that a 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. For instance, if a State were to compel all foreigners to change their surnames, this would constitute interference in contravention of article 17.⁸⁷

The Committee thus rejected the grounds for refusal from the state—*inter alia*, that the names were not "Dutch sounding" and that they had religious connotations—concluding that denying the applicants permission to change their names was arbitrary within the meaning of Article 17.

Unfortunately, it is not so clear what the position of the ECtHR is in regards to this question and the right to private life. In a significant number of cases where minorities arguably claimed that they were forced to adopt an "official language name," especially in the Turkey and the Baltic states, the ECtHR has, in fact, preferred to step aside under its doctrine of margin of appreciation and leave it to the discretion of national governments to determine whether or not there has been a breach of human rights obligations. Basically, the European Court has avoided looking too closely into these matters by stating that when (a) protecting the official language or (b) the "subjective rights" to use the official language mean, through the application of the margin of appreciation of a state, governments may prevent citizens from having names in other languages:

[I]mplicit in the notion of an official language is the existence of certain subjective rights for the speakers of that language. [. . .] That being so, it is in the first instance for the Latvian authorities—not the Court—to assess the true situation of the Latvian language in Latvia and to gauge the seriousness of the factors that could place it at risk.⁸⁸

85. *Id.*

86. *Coeriel and Aurik*, *supra* note 21.

87. *Id.*

88. *Mentzen*, *supra* note 67.

This appears to contradict international human rights standards such as non-discrimination, and it also seems to be logically incoherent. The European Court for example offered no evidence to show how allowing citizens to have a name in their minority language would “place at risk” the official language. Nor was there, in fact, any indication as to why, exactly, allowing a child to carry a minority language name would prevent anyone else from using the official language with state authorities.⁸⁹

Most likely, for the historical reasons mentioned earlier, judges from a civil law European tradition appear at times to be uncomfortable applying human rights standards to matters involving the official language policies of a state in relation to the names of citizens, preferring to leave any claim of violation to the determination of national authorities by raising the doctrine of margin of appreciation.⁹⁰

One of the arguments sometimes mentioned by the ECtHR is the need to protect the rights of others by denying to some the right to their own names and surnames in their own language. How this is connected to the margin of appreciation of a state is perhaps most clearly set out in the following extracts:

[T]he Court acknowledges that the official language is, for these States, one of the fundamental constitutional values in the same way as the national territory, the organisational structure of the State and the national flag. A language is not in any sense an abstract value. It cannot be divorced from the way it is actually used by its speakers. Consequently, by making a language its official language, the State undertakes in principle to guarantee its citizens the right to use that language both to impart and to receive information, without hindrance not only in their private lives, but also in their dealings with the public authorities. In the Court's view, it is first and foremost from this perspective that measures intended to protect a given language must be considered. In other words, implicit in the notion of an official language is the existence of certain subjective rights for the speakers of that language. [. . .] That being so, it is in the first instance for the Latvian authorities—not the Court—to assess the true situation of the Latvian language in Latvia and to gauge the seriousness of the factors that could place it at risk.⁹¹

Unfortunately, the ECtHR never explains how allowing individuals, in particular minorities and indigenous peoples, to use their own names and surnames directly denies to anyone else the right to use the official language

89. In at least one other case, however, the European Court seemed to leave the door open to a different interpretation by hinting, though almost as an afterthought, that a general prohibition of first names “not in the Turkish language dictionary” would be difficult to reconcile with the right to private life under the European Convention. *Güzel Erdagöz v. Turkey*, App. No. 37483/02, Judgment 21 Oct. 2008, ¶ 53.

90. *Lautsi and others v. Italy*, App. No. 30814/06, Judgment 18 Mar. 2011.

91. *Mentzen*, *supra* note 67.

with state authorities. The argument seems counter-intuitive because there is no obvious connection between the two. It is therefore fair to say that in the absence of any further explanation or evidence to support its statement in this regard, the reasoning of the Court here is rather unconvincing.

More fundamentally, cases such as *Mentzen alias Mencina v. Latvia* appear problematic in terms of legal reasoning for two reasons:

1. The ECtHR application of the doctrine of margin of appreciation is a throwback to the Westphalian refusal to accept interference in the sovereignty of a state in relation to the treatment of the population of country by its government.
2. The ECtHR reference to the “subjective rights for the speakers” [of the official language] of a state as being a sufficient basis to avoid its international obligations would seem to mean that a government could simply invoke a “national right” to use an official language to completely set aside and ignore a basic human right and its international legal obligations. This would—if it were true—undermine the global regime of human rights if it were to be applied whenever the claimed “national right” of some individuals could be used to trump an international human right.

It is noteworthy to point out that there will, in all likelihood, have to be a change in the Court’s current approach because it appears untenable in light of more recent and cogent cases from the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination and the European Court of Justice, among others. The prohibition of discrimination, and even the significance (which the Court did not consider in cases involving names) of treaties such as the CoE’s Framework Convention (Article 11) and the European Charter for Regional or Minority Languages (Article 10.5) recognize a right to one’s name or surname in the language of that person.

IV. THE RIGHT TO A PERSON’S NAME IN LITHUANIA: A CASE STUDY

Central to the rights of minorities are the promotion and protection of their identity. Promoting and protecting their identity prevent forced assimilation and the loss of cultures, religions and languages—the basis of the richness of the world and therefore part of its heritage. Non-assimilation requires diversity and plural identities to be not only tolerated but protected and respected.⁹²

Lithuania is a Baltic state which adopted, like its neighbor Latvia, a number of restrictions on the official recognition and use of its citizens’ names after it regained independence in 1990. These two countries, along with Turkey,

92. UNITED NATIONS OFFICE OF THE HIGH COMMISSION OF HUMAN RIGHTS (OHCHR) MINORITY RIGHTS: INTERNATIONAL STANDARDS AND GUIDANCE FOR IMPLEMENTATION 8 (2010).

are those which have not only the most rigid limitations on the use and recognition of the names of minorities in Europe, they are also the “triad” with the largest number of alleged violations of human rights involving minority name cases, although it seems Turkish authorities are now adopting a more moderate approach in these matters.

Although not always consistently argued by authorities, these restrictions appear to be based on the belief that Lithuanian national identity must be asserted and enhanced, and in particular that the Lithuanian language must be protected at all costs. The centrality of these views cannot be exaggerated. It helps explain why Lithuania is one of the few countries in the world where all citizens must have names that officially, conform to the “spelling rules of the Lithuanian language”—even in the case of names which are not in the Lithuanian language. For example, the position of the Constitutional Court of Lithuania is that the status and protection of the Lithuanian language as constitutional value, combined with the principle of equality of all citizens, only allows for the use of the state language in the official orthography, usage, and recognition of the names and surnames of citizens.⁹³

The prominent role of the official language in the national identity of the country has, however, at times led to what some might characterize as rather extreme linguistic restrictions, including for private businesses and individuals. The names of newly established businesses must be approved by the State Lithuanian Language Commission and not contain the letters “q,” “w,” and “x,” or if they do not follow particular “spelling rules of the Lithuanian language.” This does not apply to foreign businesses.⁹⁴ Private individuals cannot have private bilingual signs in minority languages such as Polish or Russian on their property showing street or locality names, although the same prohibition once again is not applied to bilingual street signs where a “foreign” language such as English is used “for information purposes.”⁹⁵

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93. Judgment of the Constitutional Court of Lithuania, 21 Oct. 1999, No. 90-2662 (*Lietuvos Respublikos Konstitucinio teismo sprendimas, Dėl Lietuvos Respublikos Aukščiausiosios Tarybos 1991 m. sausio 31 d. nutarimo dėl vardų ir pavardžių rašymo Lietuvos Respublikos piliečio pase atitikimo Lietuvos Respublikos Konstitucijai*), Valstybės Žinios, 27 Oct. 1999, No. 90-2662, available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=88906&p_tr2=2.
 94. The Director of the Municipality of Šalčininkai where members of the Polish minority constitute around 84 percent of the population refused to comply with what he considered to be an illegal court order to seize bilingual (Lithuanian-Polish and Lithuanian-Russian) street signs put up by private individuals on the outside walls of their homes, and was forced to pay a 47,384 litas fine. See *Šalčininkai Official Daskevič Pays Fine for Bilingual Street Signs*, LITHUANIA TRIBUNE, 8 May 2014, available at <http://www.lithuaniantribune.com/67702/salcininkai-official-daskevic-pays-fine-for-bilingual-street-signs-201467702/>.
 95. A series of recent changes now allow for the use of other languages for tourist and business purposes in public transport, customs offices, hotels, banks, advertisements and tourist agencies (Valstybinės lietuvių kalbos komisijos nutarimas, Dėl viešosios informacijos ne valstybine kalba pateikimo. The State Lithuanian Language Commission on. 8 Nov. 2012 adopted Resolution No. N-5 (136) on non-public information in the state language of submission.

Despite Lithuania having ratified a number of treaties which provide for the obligation to recognize and use the names of its citizens in minority languages,⁹⁶ and despite criticisms at the international level that these legal obligations were not being respected,⁹⁷ state authorities have been unable or unwilling to allow citizens to freely have their names or surnames exist in their own languages if these contain the letters w, q, or x, or if they do not follow particular the “spelling rules of the Lithuanian language.”

This intransigence—at a time when governments all over the world have had to allow for the use of the name of a person in minority languages in places such as Iceland and Japan seems at odds with the changing face of the country itself. Through the effects of greater mobility within the European Union of global population movements and the push and pull of economic activities throughout the European continent, Lithuania finds itself with 16 percent of marriages each year being made up of mixed couples, with one spouse being from a foreign country. This also leads to a growing phenomenon of, for example some Lithuanian women adopting the (foreign) surname of their husbands. These women are also having their children outside Lithuania, so about 16 percent of all the births of the country are taking place outside of Lithuania, according to figures from 2011. As a consequence of these and other factors, a likely unexpected result is a growing schizophrenic situation. Many of the Lithuanian women and their children will have two quite different surnames in Lithuanian documents and in other documents from outside of Lithuania. Understandably, this can give rise to a series of unnecessary and unpleasant or troublesome situations. This happens when documents from Lithuania may be used in other countries to prove marriage or family ties and contradict other European documents from outside the country.

What follows are the type of concrete situations which arise where Lithuanian authorities insist that the names and surnames of all of its citizens (but not of foreigners) be spelled as if they were all in the Lithuanian language, even in the case of names or surnames which are in Polish or are in a number of other minority languages. It also explains why state authorities insist on not allowing these names without restrictions.

96. In 2000 Lithuania ratified the Framework Convention, and concluded in 1994 a Treaty on Friendly Relations and Good Neighbourly Cooperation of the Republic of Lithuania and Republic of Poland which both contain provisions on this matter.

97. See, e.g., Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Lithuania, *supra* note 79, at 22; Third Opinion on Lithuania, 28 Nov. 2013, CM(2014)17, at 19: “The Advisory Committee regrets to note the absence of progress in the long standing controversy regarding the right of persons belonging to national minorities to spell their names and surnames in the minority language in official documents.”

A. Minority (non-Lithuanian) Names and Surnames of Minorities in Official Documents

Legislation in Lithuania provides that in official documents, the names and surnames of all citizens, including those who are members of a minority, must be written according to Lithuanian language “spelling” and use the Lithuanian “alphabet,” meaning the Latin-based script letters officially recognized in the Lithuanian language. The legislation also provides that a citizen may request that his or her name and surname be written based on its pronunciation in Lithuanian, with or without Lithuanian endings.⁹⁸

While initially the option of allowing the writing of names with or without Lithuanian endings may seem commendable, the legislation does not distinguish between names which use the same script (such as languages using the Latin alphabet with some variations in a few letters which is the case with Polish and Lithuanian), and names which do use a distinct script (as between Cyrillic for Lithuanian and Latin for Russia). This sets Lithuania apart from the practice in most countries which in the first case would use the transliteral approach (“looks like”), and in the latter approach would use the transcription approach (“sounds like”).⁹⁹ This narrow approach of the legal obligation of a country that requires under the Framework Convention that the names of national minorities be officially recognized and used “in the minority language.” Not allowing the use of the literal approach and a transcription in the case of names in languages such as Polish or German that like Lithuanian use the Latin script contradicts case law,¹⁰⁰ as well as good practice as identified in the treaty dealing with the recording of surnames and forenames in civil status registers.¹⁰¹ This explains even the State Commission of the Lithuanian Language only approving rules for the transcription (the “sounds like” approach) of names of citizens where the language used involves a completely different script, such as is the case for Russian,¹⁰² Ukrainian,¹⁰³ and Belarusian.¹⁰⁴

98. Regulation of the Lithuanian Parliament of 31 Jan. 1991, No. I-1031 (*Lietuvos Respublikos Aukščiausios Tarybos 1991 m. sausio 31 d. nutarimas nr I-1031, Dėl vardų ir pavardžių rašymo Lietuvos Respublikos piliečio pase*), Valstybės žinios, 20 Feb. 1991, No. 5-132, available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=652&p_tr2=2.

99. See for example a description of European practices in European Migration Network, *Ad-Hoc Query on Transliteration of Foreign Names* (9 Mar. 2010), available at http://emn.ypes.gr/media/18326/cz_ad-hoc_transliteration_compilation-open_mar-9.pdf.

100. See *Mentzen*, *supra* note 67; *Christos Konstantinidis*, *supra* note 75.

101. Article 2 identifies the “literal” approach, and Article 3 the use of transliteration for different scripts only in the Convention on the Recording of Surnames and Forenames in Civil Status Registers, arts. 2, 3, ICCS Conv. No. 14, signed 13 Sept. 1973, Bern, Switzerland, available at <http://ciec1.org/Conventions/Conv14Angl.pdf>.

102. *Pavardžių, vardų ir vietovardžių transkripcijos iš rusų kalbos į lietuvių kalbą ir iš lietuvių kalbos į rusų kalbą instrukcija*, Vilnius 1990, available at <http://aleksej.ivenkov.lt/lang/lt/2010/07/23/vardu-ir-vietovardziu-transkripcija/>.

103. Regulation of the State Lithuanian Language Commission *Lietuvos ukrainiečių pavardžių ir vardų rašymo Lietuvos Respublikos piliečio pase taisyklės* approved 25 Nov. 1991, available at <http://www.vlkk.lt/aktualiausias-temos/svetimvardziai/perrasa-is-ukrainu-kalbos>.

104. Regulation of the State Lithuanian Language Commission *Lietuvos baltarusių (Gudų) pavardžių ir vardų rašymo Lietuvos Respublikos piliečio pase taisyklės* approved at the meeting of 26 Sept. 1991, available at <http://www.vlkk.lt/aktualiausias-temos/svetimvardziai/perrasa-is-gudu-baltarusiu-kalbos>.

This use of the transcription method rather than the literal one for names of citizens in Polish and German thus runs contrary to prevailing international approaches—and raises the largest numbers of complaints among members of the national minorities in the country, since Polish language names (the country's largest minority) will be entered in official documents on pronunciation rather on how they look literally in the Latin script. For this reason, for example, Polish names in Lithuanian passports can be significantly different from the “original” version in Polish. According to the rules of State Lithuanian Language Commission for writing Polish names and surnames,¹⁰⁵ the letter “ą” which, although it is a Latin-based letter, has a diacritic unknown in Lithuanian; it must therefore be transcribed “as it sounds in Lithuanian (“om” or even “on”) rather than how it should be as simply “a” if one were to use the generally accepted literal approach. Similarly, the Polish language, “ę” becomes “em,” or “en” in Lithuanian.

Through the application of these official writing rules, Polish names are at times no longer easily recognizable. Dziekiewicz can become Dzekevič, while Łądecki turns into Liondecki. Neither of these examples follow the literal approach that is widely adopted around the world, nor in these examples is there respect for the use of the names of the Polish minority in their own language as is required under the Framework Convention. Arguably under the different human rights standards seen previously, the approach of Lithuanian authorities to the spelling of Polish (or German and other Latin-based languages) names is also in breach of the right to private life and is additionally discriminatory since these significant changes to certain names are limited to those citizens whose names share the same (Latin) script—and in particular Polish. The names of foreigners or tourists are recognized and used in their original form with no changes, even when they are in Polish or use the letters q, x, and w, and the use of transcription for the names of languages using the Cyrillic script (Russian, Ukrainian, Belorussian) also raises no concerns.

There was just one small acknowledgment by Lithuanian authorities that national minorities should be allowed to use their own names. In 2009, the Constitutional Court of Lithuania ruled that in the section of a Lithuanian passport entitled “Other Entries,” the passport holder could write his or her name and surname using Latin letters with diacritics, though at the same time insisting that this had no legal value and could not be opposed to the version of the name that is recognized in the Lithuanian language.¹⁰⁶

105. Regulation of the State Lithuanian Language Commission *Lietuvos lenkų pavardžių ir vardų rašymo Lietuvos Respublikos piliečio pase taisyklės* approved at the meeting of 28 Mar. 1991, available at <http://www.vlkk.lt/aktualiausios-temos/svetimvardziai/perrasa-is-lenku-kalbos>.

106. Ruling of the Constitutional Court of the Republic of Lithuania of 6 Nov. 2009 “On writing the name and family name of an individual in the passport of the Republic of Lithuania”, Case Nr. 14/98, available at <http://lrkt.lt/en/court-acts/search/170/ta1292/content>.

Thus, the current situation in Lithuania is that citizens who are national minorities and whose language is written in the Latin script—particularly members of the Polish or German minority—cannot in most cases have state authorities recognize or use their own original names in their language. Currently, the Polish minority remains the largest group of individuals whose personal identity is restricted in ways not consistent with either international standards or common practice in other countries.

B. The Spelling of Foreign Names in Official Lithuanian and in Other Documents: Where Foreigners are Treated Better than Citizens

Oddly, and contrary to the legal explanations usually put forth by Lithuanian authorities as to why changes must be made in the spelling of names of national minorities, against the wishes of those involved, all of the above restrictions in relation to names with letters using different diacritics or even “non-existent” letters such as q, x, and w disappear completely if the names of the individuals (or businesses) are foreign or of non-citizens.

Whereas Lithuanian citizens must only use the “Lithuanian version” of their names in official documents as well as in a variety of private contexts decreed by authorities, foreigners, tourists, and all non-citizens who find themselves in the country can use the original linguistic forms of their names with no restrictions in all official documents, as well as in literature, advertisements, tourist and other forms of public information, and in undefined “special texts.”¹⁰⁷ The result of Lithuanian legislation is thus that everyone is free to use their own names in their own languages and all letters of the Latin alphabet, except for citizens with a name using the Latin-based script and the letters q, x, or w.

It means in practice that for foreigners and citizens with names in a different script (Cyrillic, Arabic, etc.), the transcription approach is used, as is widely practiced in most parts of the world. The literal approach (“looks like”) in the case of names written in the Latin alphabet will also be used for foreigners, as is also fairly universally adopted elsewhere, but will generally not be used for citizens. Thus the name of non-citizens using the Latin alphabet will follow the literal approach letter by letter and include even letters that officially “do not exist” in the Lithuanian language. George W. Bush is still George W. Bush in Lithuania, even though “officially” the letter w should not be used for official purposes because it does not exist in the Lithuanian language. Mieczysław Dziągiewski, a citizen of Poland, could

107. Regulation of the State Lithuanian Language Commission *Dėl Valstybinės lietuvių kalbos komisijos prie Lietuvos Respublikos Seimo 1997 m. birželio 19 d. nutarimo Nr. 60 „Dėl lietuvių kalbos rašybos ir skyrybos“ pakeitimo*, 24 Oct. 2013, Nr. N-11 (147), available at <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=41265&Condition2=>

therefore obtain a Lithuanian driving license under the name of Mieczysław Dziegielewski; if however he were a Lithuanian citizen, authorities would have to reject his name and change his identity, and the license would have to bear the name of “Mečyslav Dzengelevski” or even “Mečyslavas Dzengelevskis” instead.¹⁰⁸ In practical terms, almost everyone everywhere in Lithuania can use their own names, except for certain citizens who belong to certain national minorities who are prevented from doing so because of state policies and language restrictions.

C. Opposition or Acceptance in the Spelling of Names of Minorities?

In its December 2012 program, the Lithuanian government, along with its coalition partners, committed themselves to resolving the issues relating to the protection of national minorities in the country, including the original spelling of the names of national minorities in official documents. While a special working group under the Ministry of Justice was set up and was responsible for preparing a draft law on the spelling of names not in the Lithuanian language, it has not yet submitted any proposal. The issue of the names of minority citizens has, however, brought out a fairly public debate on the matter, and some opposition.

On 13 February 2014, for example, during a public hearing on the issue at the Constitutional Court, the Deputy Minister of Justice Paulius Gričionas did acknowledge that the State Lithuanian Language Commission allows the use of the names of foreigners without any changes in official registers and migration documents, but took the view that the same could not be done for citizens because of the prevailing view under the Constitution that the protection of the state language negates the choice of citizens as to his or her name. He added, however, that “as a result of globalization and European integration, it was up to the Commission to decide whether the non-Lithuanian names [of Lithuanian citizens] can be considered as part of the Lithuanian language, and initiate appropriate regulations in this respect.”¹⁰⁹ For its part, the Constitutional Court of Lithuania was of the view that the role of linguists (i.e., the State Lithuanian Language Commission) in determining the principles as to how non-Lithuanian names and surnames

108. The latter version is known as the “grammatical form” of a citizen’s name, following the traditional ending for male or female names in the Lithuanian language. These are automatically imposed on the officially recognized names of citizens in Lithuania, even in the case of names not in the Lithuanian language such as Polish or Russian. Individuals can however request that their names be “ungrammatical,” meaning not have the traditional endings to a surname such as in the case of unmarried women (“-aitė” is Lithuanian), or a man (“-is”) For example, a citizen whose original surname might be non-Lithuanian such as “Suckel” would see it changed by authorities into “Suckelis.”

109. Hearing of the Constitutional Court of Lithuania, 13 Feb. 2014.

should be spelled in official documents was essential.¹¹⁰ While at first seemingly obscure, these pronouncements suggest an attempt to “depoliticize” the issue of allowing a citizen to maintain a name not in the Lithuanian language by invoking the role of “linguists” in the decisions to be made on how to deal with names and surnames of minorities should be dealt with in official Lithuanian documents.

Recent developments must also be considered in context: on the one hand, there is currently no possibility for certain minorities who are citizens of Lithuania to have their names in their own language. On the other, a number of proposals have been put forth as to how to deal with the issue of the spelling of names and surnames in the Lithuanian Parliament, though not from the side of the Lithuanian government. On 1 April 2014, the Social Democrats presented a draft law which would enable the official recognition and use of the name and surname of a citizen in its original form, and allow the use of diacritics in the case of letters that are based on the Latin script.¹¹¹

Ten days later, the Lithuanian Conservative Party presented its own alternative in Parliament, but this time actually rejected any official use of the names and surnames of citizens in non-Lithuanian languages, and only permitted the use of Lithuanian diacritics so as to transliterate these names according to pronunciation (with or without traditional Lithuanian name endings). The “original” form of the name of a citizen would only be allowed in one situation: in Lithuanian passports to be added in the section of “Other Entries” and with no legal significance whatsoever.¹¹²

In other words, their proposal is diametrically opposed to that of the Social Democrats, and apparently the Conservatives seek to firmly put into law the current status quo which prohibits citizens from spelling their names in a “non-Lithuanian” way or using the letters q, w, or x—but allowing anyone who is not a citizen to do so in official Lithuanian documents such as in licenses for drivers. There is again, in a sense, a somewhat illogical situation where it seems there is no need to protect Lithuanian national values such as the Lithuanian language against foreigners—only Lithuanian citizens—and absolutely no consideration of the human rights dimension of such restrictions.

110. Decision of the Constitutional Court of Lithuania of 27 February 2014.

111. *Proposal by the Social Democratic Party for a law on the Spelling of Names and Surnames, LR vardų ir pavardžių rašymo dokumentuose įstatymas*, 2014-04-01, No XIIP-1653.

112. *Proposal by the Conservative Party for a law on the Spelling of Names and Surnames, LR vardų ir pavardžių rašymo dokumentuose įstatymas*, 2014-04-10, No XIIP-1675. It is worth mentioning that on 8 April 2010 the Conservatives put on the Seimas's agenda a draft which would enable members of national minorities to write their names and surnames in their original form. On the same day Conservative Prime Minister A. Kubilius argued from the parliamentary gallery that names and surnames is a personal right of the individual, and not a part of state language. He also reminded Lithuanian MPs that Lithuanians living in Poland have the right to use their names and surnames in their own language in Polish passports, so one could ask why minorities in Lithuania are not entitled to the same right.

V. CONCLUSION

[The right to a name] constitutes a basic and indispensable element of the identity of each person. . . . States must ensure that every person is registered under the name that his or her parents have chosen, whenever the registration takes place, without any type of restriction to the right or interference in the decision to choose the name.¹¹³

The name of a person is perhaps one of the most central aspects of identity, an identity which brings together the strands of ancestry, community, culture, language, and history. Identity issues have often figured prominently in claims of intolerance and exclusion which also appear as a source of tension in a number of countries around the world. Indeed, as part of the recognition of the intimate connection between conflicts and the denial of the rights of minorities, "conflict prevention" documents such as the Oslo Recommendations indicate that state authorities must recognize and use the name and surname of individuals in their traditional and linguistic forms.

It is thus surprising that almost fifty years after the emergence of human rights in international law, there remains a degree of uncertainty as to the exact content and scope of certain fundamental standards, and some hesitancy to apply international human rights law to areas traditionally seen as falling within the absolute sovereignty of a state. Even the ECtHR seems resistant to examining too deeply matters that involve, for example, language policies of a state that impact on the names of individuals that are not in the official language.

Yet, this uncertainty is to be expected. The evolution of international human rights law is a phenomenon which historically is still relatively young, and also involves an area of international law where it is perhaps traditionally more difficult for states to accept outside interference in their sovereignty. The relationship between a state and its own people, including the areas as sensitive as identity, has historically been perceived as sacrosanct.

The tensions between the sovereignty of a state in this regard and the restrictions imposed by the "new" phenomenon of human rights in international law have in recent years become increasingly apparent in relation to the right to private life and those rights involving an individual's own name or surname where the identity of an individual may not be culturally, religiously, or linguistically identical to that of the nation. It is clear, however, that from the point of view of human rights, the name of a person is obviously an important component of identity that international law acknowledges,¹¹⁴ as does European Community jurisprudence.¹¹⁵

113. Contreras et al. v. El Salvador, Judgment of 31 Aug. 2011, Inter-Am. Ct. Hum. Rts.

114. Coeriel and Aurik, *supra* note 21, ¶ 10.2.

115. See *supra* note 24.

Another view, particularly emanating from the ECtHR, seems hesitant to apply human rights standards where state authorities only recognize names or surnames in an official language, even if this is imposed against the will of individuals. In a number of such cases, the ECtHR has preferred to defer to authorities and support national identity at the cost of the identity of certain individuals on the basis of race and ethnicity. They have avoided examining too closely the matters involved, either by applying the doctrine of margin of appreciation or claiming—without any supporting evidence—that to refuse to recognize an individual's own name and surname is “subjectively” necessary to protect the rights of others.

Though approaching the issue of names from different legal perspectives, the UN Human Rights Committee (on the basis of the right to private life, the UN Committee on the Elimination of Racial Discrimination) and the European Court of Justice (dealing with freedom of movement and non-discrimination) both tend to concur that state authorities generally cannot interfere with a person's name or surname for the sake of the official language of a state.

What is finally noteworthy is that the extent that individuals can use different human rights standards (in particular the right to private life, the right to a name, minority rights, or the prohibition of discrimination) in order for states to recognize and use their “own” names officially has clearly been evolving since the second half of the twentieth century, particularly in the case of children, women, transgender individuals, and perhaps more slowly, minorities.

By now, it is safe to say that beyond limited exceptions such as when names are highly objectionable or practical difficulties such as required by the transcription of names between completely different scripts, human rights standards emphasize an obligation to respect one's name as a core element of an individual's identity, as well as to assure reliability in the use of an individual's name for purpose of identification. This means that state authorities can no longer change or impose different names on individuals for reasons of state or cultural preferences, or even assertions based on the need to protect a country's national identity or an official language.