



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninetieth session
9 - 27 July 2007

DECISION

Communication No. 1285/2004

<u>Submitted by:</u>	Michal Klečkovski (represented by counsel, Henrikas Mickevičius)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Lithuania
<u>Date of communication:</u>	4 May 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 May 2004 (not issued in document form)
<u>Date of adoption of decision:</u>	24 July 2007

* Made public by decision of the Human Rights Committee.

Subject matter: spelling of author's name according to Polish orthography in identity documents

Procedural issue: non-exhaustion of domestic remedies

Substantive issues: arbitrary and unlawful interference with private life; prohibition of discrimination; protection of minorities

Articles of the Covenant: article 17, alone and read with article 2; article 26 and article 27

Articles of the Optional Protocol: articles 2; 3; 5, paragraph 2(b)

[ANNEX]

ANNEX

Decision of the Human Rights Committee under
the Optional Protocol to the International Covenant on Civil and Political rights

Ninetieth session

concerning

Communication No. 1285/2004**

<u>Submitted by:</u>	Michal Klečkovski (represented by counsel, Henrikas Mickevičius)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Lithuania
<u>Date of communication:</u>	4 May 2004 (initial submission)

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

Meeting on 24 July 2007,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication, dated 4 May 2004, is Michal Klečkovski, a Lithuanian citizen of Polish origin, currently residing in Lithuania. He claims to be a victim of violations of article 17, read alone and in conjunction with article 2, article 26 and article 27 of the Covenant the International Covenant on Civil and Political Rights by Lithuania. He is represented by counsel, Henrikas Mickevičius. The Covenant and its Optional Protocol entered into force for Lithuania on 20 February 1992.

Facts as presented by the author

2.1 The author is an ethnic Pole who was born on 7 December 1969 in Lithuania. At his birth, he was given the first name *Michał* and acquired the family name *Kleczkowski*. Both names

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

could be spelt in Russian in official documents. Indeed, until the end of the Soviet rule in 1991, the author's name was recorded officially in Lithuanian ('Michal Klečkovski') and in Russian. Since 1991, the author has only been able to use his name as spelt in Lithuanian. The pronunciation remains the same as for the Polish spelling.

2.2 The author has sought unsuccessfully to have his name officially recorded in his Lithuanian passport in accordance with the Polish spelling, namely 'Michał Kleczkowski,' instead of the Lithuanian orthography. On 18 December 2003, the author applied to the relevant administrative agency, i.e. the police, to have the name in his passport changed to the Polish spelling. This application was rejected on 24 December 2003 on the ground that the Resolution of the Supreme Council of 31 January 1991 on the writing of names and family names in passports of citizens of the Republic of Lithuania stipulates that for individuals born in Lithuania, names must be spelt according to Lithuanian orthography. In contrast, naturalized Lithuanians may continue to use the spelling of their mother language.

The complaint

3.1 The author claims that the legal requirement of the Lithuanian spelling of his name in official documents disregards an essential element of his identity and constitutes a breach of his rights under article 17, read alone and together with article 2, article 26 and article 27 of the Covenant.

3.2 With regard to article 17, the author argues that his right to have his name spelt according to the correct Polish spelling is an integral part of his right not to be subjected to arbitrary or unlawful interference with his privacy. He recalls that the Committee has held that a person's 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 to change one's own name.¹ In the present case, the author considers that he was forced to change his name to comply with Lithuanian spelling.

3.3 The author considers that such interference with his privacy is arbitrary, and explains that the Lithuanian spelling of his name "looks and sounds odd" as it does not reflect a Lithuanian name or a Polish name. It gives rise to delays in the author's mail, ridicule, and difficulties in proving his relationship with other family members abroad. He submits that in several European countries, it is possible to recognise the names of people belonging to minorities without placing an undue burden on the State. In fact, the spelling *Kleczkowski* is recognised in several countries such as Austria, France and the USA.

3.4 The author argues that the requirement to use Lithuanian orthography in the official spelling of his name is unreasonable and that other less restrictive alternatives are available. For instance, he could be offered the opportunity to spell his name in accordance with both the official language and his native language. Alternatively, since the only letters in the Polish spelling in the author's name which are not part of the Lithuanian alphabet are 'ł' and 'w' (even

¹ See Communication No.453/1991, *Coeriel and Aurik v. The Netherlands*, Views adopted on 31 October 1994, para.10.2.

though these letters are widely used in daily language), a less restrictive spelling, e.g. *Michał Kleczkowski*, could be a compromise solution.

3.5 With regard to article 17, read in conjunction with article 2, paragraph 1, the author claims that he is discriminated against because Lithuanian citizens of Lithuanian ethnic origin can use the native spelling of their names. Moreover, naturalized Lithuanians can retain the spelling used in their previous State of nationality. With regard to article 26, the author adds that he is discriminated against in comparison to naturalized Lithuanians.

3.6 With regard to article 27, the author argues that a personal name, including the way it is spelt, constitutes an essential element in the culture of any ethnic, religious or linguistic community. According to the Committee, any restrictions imposed upon the enjoyment of one's own culture and use of one's own language have to be consistent with the other provisions of the Covenant, read as a whole, reasonable and objective.² The author considers that the restrictions imposed on the spelling of his name do not fulfil these criteria. Moreover, he considers this attitude as a form of forced assimilation of the Polish minority.

3.7 The author considers that there are no available and effective domestic remedies since on 21 October 1999, the Constitutional Court upheld the constitutionality of the Resolution of the Supreme Council of 31 January 1991 on the writing of names and family names in passports of citizens of the Republic of Lithuania. The applicant in that case was the author's uncle, Tadeuš Klečkovski.

State party's submissions on admissibility

4.1 On 9 July 2004, the State party challenged the admissibility of the communication. Firstly, it argues that the complaint under article 17 should be held inadmissible under article 3 of the Optional Protocol as incompatible *ratione materiae*. Article 17 does not cover or establish any specific rules or principles for writing names in identity documents. The regulation of surnames is a matter of public order and restrictions are therefore permissible.³

4.2 With regard to article 17, read in conjunction with article 2, the State party recalls that article 2 does not have an autonomous character and submits that this part of the communication is also inadmissible under article 3 of the Optional Protocol.

4.3 With regard to article 26, the State party considers that this claim is not substantiated since the Resolution of the Supreme Council of 31 January 1991 on the writing of names and family names in passports of citizens of Lithuania clearly imposes that the name and family name of an

² See Communication No.24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, para.16; and Communication No.197/1985, *Kitok v. Sweden*, Views adopted on 27 July 1988, para.9.8.

³ See Communication No.453/1991, *Coeriel and Aurik v. The Netherlands*, Views adopted on 31 October 1994, para.6.1. See also European Court of Human Rights, *Burghartz v. Switzerland*, application no.16213/90, judgment of 24 February 1994, para.24; and *Stjerna v. Finland*, application no.18131/91, judgment of 25 November 1994, paras.37 and 39.

individual shall be written in Lithuanian letters in passports of all Lithuanian citizens without exception.

4.4 With regard to the alleged violation of article 27, the State party argues that this claim is manifestly ill-founded within the meaning of article 2 of the Optional Protocol. It believes that the writing of entries in identity documents in the state language does not deny in any way the right of members of national minorities the right to enjoy their own culture or to use their own language, including writing their names and family names in any language as long as it is not linked with the sphere of the use of the state language as an official language, which is clearly regulated by the 1995 Law on the State language.

4.5 The State party argues that the communication is manifestly ill-founded because the author's uncle, Tadeuš Klečkovski, previously submitted the same matter to the European Court of Human Rights which declared it inadmissible on 31 May 2001 as manifestly ill-founded and not disclosing any appearance of a violation of article 8 of the European Convention on Human Rights (right to privacy), taken alone or in conjunction with article 14 (principle of non-discrimination in the enjoyment of the Convention rights). While previous examination of the same matter under another international procedure does not automatically preclude that matter from being examined by the Committee, the State party considers that to the extent that the European Convention on Human Rights and the Covenant are commensurate in terms of the wording and meaning of their provisions, and the approaches of the respective supervisory organs in the application thereof, the communication does not disclose any appearance of a violation of the Covenant.

4.6 For the State party, the author has not exhausted domestic remedies since he has not brought his complaint before the national administrative courts. He could have applied to a Regional Administrative Court with a complaint relating to the lawfulness of the decision taken by the Migration Unit of the Territorial Police Commissariat on 24 December 2003. While the Constitutional Court upheld on 21 October 1999 the constitutionality of the Resolution of the Supreme Council of 31 January 1991 on the writing of names and family names in passports of citizens of the Republic of Lithuania, the State party considers that this decision did not prevent the author from availing himself of effective domestic remedies.

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

5.1 On 29 October 2004, the author reiterates that protection against arbitrary or unlawful interference with the right to choose and change one's name is covered by article 17 of the Covenant. With regard to the State party's argument that his claim under article 26 is unsubstantiated, he submits that individuals whose mother tongue coincided with the official language are not affected by the 1991 Resolution. This raises the question of whether the author who is refused an opportunity to opt for a native spelling of his name is treated in a discriminatory manner in comparison with individuals who have this opportunity.

5.2 With regard to the argument of the State party that his claim under article 27 is manifestly ill-founded, the author argues that denying the spelling of his name in his mother tongue is detrimental to his identity, as the name no longer reflects his ethnic origin.

5.3 On the issue of non-exhaustion of domestic remedies, the author recalls that the decision of the Constitutional Court of 21 October 1999 is binding on all lower courts: any appeal against the administrative decision on his case would have been futile.

State party's submissions on merits

6.1 On 11 November 2004, the State party argues that there is no violation of article 17, taken alone or in conjunction with article 2. The individual's right relating to the use of names is not an absolute right and interference with the author's right to respect for his privacy constitutes a breach under article 17 unless it can be justified as lawful and not arbitrary. The competent authorities acted in conformity with the relevant legislation, i.e. the laws on passport and identity cards, as well as the 1991 Resolution. Moreover, the refusal to enter the name and family name into an official document using Polish characters was reasonable. Nothing prevents the author from using his name and family name written in Polish characters in all his private dealings or in his signature. The Lithuanian alphabet does not contain not Polish characters, but it also does not contain German, English, Chinese and other characters. The use of the State language in passports can be reasonably expected and justified. The State party argues that article 2 does not have an autonomous character and that the alleged violation of article 17 in conjunction with article 2 is ill-founded.

6.2 On article 26, the State party argues that it has not been shown that the differentiation of treatment between citizens who were born in the country and naturalized citizens discloses a discrimination pattern. The 1991 Resolution does not provide the legal basis for writing of names or family names in any other language than Lithuanian. Information included on the identity card and passport of all citizens shall be recorded in Lithuanian letters. The author has not substantiated his allegation that the legal regulation of the writing of names and family names of naturalized citizens discriminates against non-Lithuanian national citizens.

6.3 On article 27, the State party invokes General Comment no.23 (1994) in which the Committee referred to "the right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public". In the present case, the author was not precluded from using his language in community with other members of the minority group "among themselves". It is reasonable to suggest that the use of names by and before the authorities should be distinguished from the use of names by members of minorities among themselves. The State party refers to the Explanatory Note to the 1998 Oslo Recommendations on the Linguistic Rights of National Minorities which mentions that "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." The Lithuanian spelling of the author's name merely uses the script of the official language to record the name of a person belonging to a national minority in its phonetic form, since the sounds 'sz', 'cz' and 'w' in Polish are transcribed as 'š', 'č' and 'v' in Lithuanian. Consequently, domestic law and practice on the recording of names of persons belonging to linguistic minorities comply with article 27 of the Covenant.

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

7.1 On 11 December 2006, the author reiterates that the imposed restriction on the writing of his name is inconsistent with article 17, and that a personal name, including the way it is spelt, is an essential element of personal identity. The author's personal name indicates that he belongs to a national minority. While he agrees that he can use his personal name in his native language in private dealings, he challenges the State party's refusal to use the native spelling of his personal name in official documents.

7.2 The author emphasises that his request is restricted to the use of his mother tongue, Polish. Polish and Lithuanian are similar languages. A number of European states allow the use of other than official languages for public purposes, including the characterization of personal names in official documents using Latin spelling.

7.3 The author notes that draft legislation was proposed in 2005 "on writing of names and family names in documents". The bill was not adopted by Parliament, but the proposed legislation did provide that non-Lithuanian personal names written in Latin alphabet would be used in original form, except the letters that are absent in the Lithuanian language. In accordance with this solution, the author's name would be spelt *Michal Kleczkowski*, which would clearly indicate his ethnic identity.

Issues and proceedings before the Committee

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

8.2 The Committee notes that the author's uncle has brought a similar claim to the European Court of Human Rights which declared it inadmissible on 31 May 2001 (see para.4.5 above). It recalls that the concept of 'the same matter' within the meaning of article 5, paragraph 2(a), has to be understood as including the same claim concerning the same individual before the other international body.⁴ The present communication has been submitted by the same individual. Even if the same matter had already been examined by the European Court of Human Rights, the Committee notes that the State party has not entered a reservation to article 5, paragraph 2(a), to preclude that matter from being examined by the Committee. Accordingly, it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

8.3 With regard to the claim that the author's name should be spelt using Polish characters, the Committee considers that the author has not substantiated any claim under the Covenant. It thus finds that this part of the communication is inadmissible under article 2 of the Optional Protocol.

⁴ See Communication No. 75/1980, *Fanali v. Italy*, Views adopted on 31 March 1983, para.7.2; and Communication No. 1155/2003, *Leirvag and others v. Norway*, Views adopted on 3 November 2004, para.13.3.

8.4 With regard to the author's claim that the spelling of his name should be modified so as to reflect his Polish origins, while only using Lithuanian letters (see para.3.4 above), the Committee notes that the author has never presented this claim to the national authorities. In the circumstances, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering of the communication.

7. Accordingly, the Committee decides:

- (a) that the communication is inadmissible under article 2 and article 5, paragraph 2(b) of the Optional Protocol;
- (b) that this decision be transmitted to the State party and to the author.

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