RECOGNITION OF A STATUS ACQUIRED ABROAD: THE BALTIC STATES*

RECONOCIMIENTO DE UNA SITUACIÓN JURÍDICA RELATIVA AL ESTATUTO PERSONAL VÁLIDAMENTE CREADA O MODIFICADA EN EL EXTRANJERO: LOS PAÍSES BÁLTICOS

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Abstract: This report addresses questions of civil status recognition in Baltic states: Estonia, Latvia and Lithuania. All three states restored their independence in the early 90-ties, and since then, they have been developing their legal systems, including – private international law. With time, the relevance of private international law increases, mainly due to the increased migration. However, the doctrine of Baltic private international remains limited. This report presents main legal developments and growing case-law related to recognition of civil status. The ECHR and CJEU case law influenced to some extent, the Lithuanian courts' case law regarding names and same-sex couples. Latvian courts continue to refuse recognition of non-Latvian spelling of names, and Estonian authorities are the most flexible in this regard. Both Lithuania and Latvia used the protection of the national language as the justification to deny granting the recognition of names acquired abroad. It occurs that all the states do not focus on developing methodologies for recognizing the civil status acquired abroad.

Keywords: status acquired abroad, status recognition, international name law, Lithuanian private international law, Latvian private international law, Estonian private international law.

Resumen: Este informe aborda las cuestiones del reconocimiento del estatuto personal en los países bálticos: Estonia, Letonia y Lituania. Los tres países restauraron su independencia a principios de los años 90, y desde entonces, han estado desarrollando sus sistemas legales, incluido el derecho internacional privado. Con el tiempo, la relevancia del derecho internacional privado aumenta, principalmente debido al aumento de la migración. Sin embargo, la doctrina de la internacional privada báltica sigue siendo limitada. Este informe presenta los principales desarrollos legales y la creciente jurisprudencia relacionada con el reconocimiento del estado civil. La jurisprudencia del TEDH y del TJUE en cierta medida influyó en la jurisprudencia de los tribunales lituanos en relación con los nombres y las parejas del mismo sexo. Los tribunales letones siguen negándose a reconocer la ortografía de nombres no letones, y las autoridades

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**Lithuania and Latvia.

**Estonia.

estonias son las más flexibles en este sentido. Tanto Lituania como Letonia utilizaron la protección del idioma nacional como justificación para denegar el reconocimiento de nombres adquiridos en el extranjero. Ocurre que no todos los estados se enfocan en desarrollar metodologías para el reconocimiento de una situación jurídica relativa al estatuto personal válidamente creada en el extranjero.

Palabras clave: situación jurídica relativa al estatuto personal válidamente creada en el extranjero, reconocimiento, el nombre en derecho internacional privado, derecho internacional privado de Lituania, derecho internacional privado de Letonia, derecho internacional privado de Estonia.

Summary: I. General Issues. 1.1 Awareness in academia, politics, judicial and administrative practice. 1.2. Principles of status recognition and denial of status recognition II. Process of recognition. 2.1 Rules and procedure of recognition. 2.2. Other requirement for recognition. 2.3. Revision. 2.4. Database entry requirement . 2.5. Change of status consequences.

I. **General issues**

1.1. Awareness in academia, politics, judicial and administrative practice

1. The emigration from Lithuania, Latvia and Estonia, particularly since 2004-2005 has been very high and it is constantly growing[1]. The statistics shows that also number of immigrants to these countries increases[2]. This trend causes that there are more international families. Therefore, civil registrars of Baltic States have to deal quite often with the following issues: marriage concluded abroad, name acquired in a foreign country or dissolution of marriage that took place in another state or birth certificates issued abroad. It is worth mentioning that one of the ECJ cases involved Lithuanian rules on names[3].

2. Due to the increased number of relevant cases general awareness among practitioners regarding issues of recognition is quite high. Unfortunately, it is not reflected in a legal doctrine. This in turn affects quality of legislative initiatives.

3. Lithuanian, Latvian and Estonian Private international law doctrine is rather limited. There is lack of special literature related to international family law. The only handbook of private international law in Lithuania was published in 2001 and does not include much information about recognition[4]. However, due to practical reasons the topic of recognition of names is not completely unknown to the Lithuanian doctrine. In fact, academic discussion consists of several articles[5] and a book chapter[6] devoted to the cross-border issues of names (particularly after *Runevic-Wardyn* case) and several articles on recognition of same-sex marriages[7]. The literature is very limited and the opinion of authors is in favor of recognition. Nonetheless, the political discussion on the draft laws does not refer to the doctrinal sources.

[1] General trends of emigration and immigration since 2000 until 2011 are presented in *Engbersen,* G. and J. *Jansen* (2013), “Emigration from the Baltic States: Economic impact and policy implications”, in Coping with Emigration in Baltic and East European Countries, OECD Publishing, Paris, p. 14.

[2] *Ibidem*.

[3] CJEU 12 May 2011, case C-391/09, *Runevič-Vardyn & Wardyn*, ECLI:EU:C:2011:291 (*ECLI:EU:C:2011:291*).

[4] V. Mikelenas, *Tarptautinės privatinės teisės įvadas*, Vilnius, Justitia 2001.

[5] K. Miksa, „Interes państwa a prawo do nazwiska w świetle prawa międzynarodowego i unijnego”, *Rocznik Stowarzyszenia Naukowców Polaków Litwy*, 2014, vol. 13/14,p. 260-277; A. MICKONYTĖ, *“*The Right to a Name *Versus* National Identity in the Context of EU Law: The Case of Lithuania”, *Review of Central and East European Law,* 2017, n. 42, p. 325-363.

[6] K. Miksa., “Nuo pripažinimo link nacionalinio identiteto apsaugos – pavardžių problematika Europos Sąjungos Teisingumo Teismo jurisprudencijoje“, en K. KATUOKA et al., *Transnacionalinės teisinės sistemos - santykio ir sąveikos problemos: mokslo studija*, Vilnius, Mykolo Romerio universitetas, 2014, **p.** 152-181.

[7] L. Vaigé, “The time is ripe: legal recognition of same-sex marriages in Lithuania”, *Baltic Yearbook of International Law,* 2012, vol. 11., p. 239-280; L. Vaigé, “Legal recognition of same-sex marriages in Lithuania and the ordre public exception“, en A. Schuster, *Equality and justice: sexual orientation and gender identity in the XXI century*, 2011, p. 271-286; L. VAIGĖ, “The problematics of recognition of same-sex marriages originating from member states according to the EU legal regulation”, *Socialinių mokslų studijos : mokslo darbai = Social sciences studies : research papers*, 2012,n. 4(2), p. 755-775.

4. The most recent Latvian handbook on private international law was published in 2015 and is dedicated only to general issues of the subject[8]. There were also some publications of lectures on private international law in Latvian[9] and general handbooks[10]. None of them provides detailed analysis of acceptance of foreign status in Latvia. Interesting analysis regarding legal issues of personal names in Latvia is presented by K. Naumova, who explains the place of the names in Latvian legal system also in international situations[11]. However, the main focus of the study is human rights aspect related to names, particularly the issue of the names of persons belonging to national minorities. The author does not analyze the private international law problematic.

5. The most important Estonian compilation of lectures on private international law was published in 2003 (it was amended in the following years)[12]. The book gives an overview about Estonian international private law and international civil procedure. The publication does not include analysis about acceptance of foreign status in Estonia. There is nevertheless an interesting article by Maarja Torga about granting and applying names as a hidden problem in Estonian private international law[13]. There is also an article by Kätlin Jaadla and Maarja Torga on recognition of foreign marriages and registered partnerships in Estonia[14]. The problem of non-marital partnership and its legal regulation, as well as non-married cohabiting couples and their constitutional right to family life was broadly described by Andra Olm[15]. The master degree thesis of Helena Lepper on recognition of same-sex marriages concluded abroad in Estonia is worth mentioning[16].

6. There is awareness of the issue at the political level of all Baltic States and consequently since 90-ties several draft laws enabling the recognition of names are being introduced. The main issue arising in Lithuania regarding recognition of names acquired abroad is their spelling in Lithuanian documents (civil registry acts and personal identification documents). According to the Lithuanian law[17], the names of the Lithuanian citizens in the personal identification documents should be spelled in accordance with the Lithuanian language rules.

7. After the restoration of independence of Lithuania in 1990 the issue of linguistic identity of the state became of the highest priority. This reflected in rules on spelling names or using topographical names in minority languages. In order to eradicate in particular the Russian language from public life the rules on usage of the Lithuanian language became very strict and the language became the main sign of distinguishing the Lithuanian nation. The Lithuanian language became a constitutional value of the highest rank. Initially this was a problem related to the spelling of names of national minorities in Lithuania that constituted quite a big part of the Lithuanian residents' after restoring independence (more than

[8] A. Mierina, *Starptautiskās privāttiesības: ģenēze un sistēma =Private international law: genesis and system*, Riga, LU Akadēmiskais apgāds, 2015.

[9] H. Albats , *Starptautiskās privātās tiesības*, Riga, 1923; H. ALBATS, *Starptautiskās privātās tiesības*, Rīga, 1940.

[10] J. Bojars , *Starptautiskās privāttiesības III. 2. pārstrādātais izdevums*. Rīga, Zvaigzne ABC, 2013.

[11] K. Naumova "Legal aspects of transcription of personal names in the Latvian language", *RGSL Research Papers*, n. 11, 2014

[12] L.Almann/ I.Nurmela/ V.Tuulas/ M. Vainomaa,*Rahvusvaheline eraõigus*, Tallinn, 2003.

[13] M. TOORGA, "Isikunimede andmine ja kohaldamine – peidetud probleem Eesti rahvusvahelises eraõiguses", *Juridica* 2014, n. 7, p. 520-527.

[14] K. Jaadla/ M. Toorga, "Välisriigis sõlmitud samasooliste abielu ja kooselu tunnustamine Eestis", *Juridica*, 2013, n. 8, p. 598-607.

[15] A. Olm , "Non-married Cohabiting Couples and Their Constitutional Right to Family Life", *Juridica International,* 2013, n. XX, p. 104-111, and A. OLM*., Mitteabieluline kooselu ja selle õiguslik regulatsioon*, Tallinn, 2009, available at: https://www.just.ee/sites/www.just.ee/files/elfinder/article_files/mitteabieluline_kooselu_ja_selle_oiguslik_regulatsioon_2009_0.pdf.

[16] H. Lepper ., *Välisriigis sõlmitud samasooliste abielude tunnustamisest Eestis*, Tallinn, 2017, available at: http://dspace.ut.ee/bitstream/handle/10062/57149/lepper_helena_ma_2017.pdf .

[17] Law No IX-577 of 6 November 2001 concerning identity cards (Žin., 2001, No 973417), as amended (Žin., 2008, No 76-3007), and Law No IX-590 of 8 November 2001 concerning passports (Žin., 2001, No 99-3524), as amended (Žin., 2008, No 87-3466) and Decree No I1031 of the Lithuanian Supreme Council of 31 January 1991 concerning the writing of surnames and forenames in passports of citizens of the Republic of Lithuania (Žin., 1991, No 5132) provide that information set out on identity cards and in passports must be entered in Lithuanian characters.

20 percent of the population). The Lithuanian Constitutional Court in 1999 in its ruling explained that constitutional status of the Lithuanian language requires its usage in public life[18]. Documents of the person belong to the domain of public life and though all the data in the documents should be written in Lithuanian language, otherwise, the constitutional status of the state language would be denied. The name of the person was treated as a part of this data and its particular importance for the person was not considered. Once the Court has decided regarding spelling of the names of Lithuanian citizens, the application of these rules extended also to names acquired abroad. In practice, the change of spelling of the name means change of the name itself, because for the foreign authority that issued the original (primary) document, for instance names "Jacquette" and "Žakė" are completely different names. Summing up, political discussions and legislative initiatives regarding recognition of names primarily focus on their spelling.

8. Very similar approach had Latvian authorities. The status of the official language is very strong. Therefore, names of Latvian citizens have to be written in accordance with the rules of Latvian language. However, Latvian authorities haven't undertaken any legislative steps in order to facilitate recognition of names in Latvia.

9. Lithuanian draft laws could be divided into two groups: permitting original spelling of names and requiring Lithuanian spelling. The general negative attitude towards foreign names was changed after the ruling of the Constitutional Court of 2014[19]. The Court explained that the Parliament (Seimas) while establishing the legal regulation of writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania has to receive an official conclusion from the State Commission of Lithuanian Language (hereinafter: SCLL). It is a very rare situation when the Constitutional Court addresses practically the same issue twice in its practice. In case of names the ruling shows that initial restrictive opinion has changed to a more flexible and thereof allows to expect in future for a more person-oriented approach both in legislative and judiciary practice.

10. Actually, there is a lack of common agreement in regard to the recognition of names acquired or altered abroad and it is unlikely that in the nearest future the problem will be solved on the legislative level. However, the courts are aware of the loophole in law and therefore, they have been developing case-law allowing recognition of the names both in terms of civil registry records and enabling to have a name in original form in identity documents.

11. The problem of names has not attracted a lot of attention from the Estonian legislator. It is not regulated in private international law. The Names Act from 15.12.2004[20] does not exhaustively regulate the problem of granting and applying names in private international law. The § 5 describes the orthography of personal names stating that they shall be written using Estonian-Latin letters and symbols. If required the transcription rules for non-Estonian names shall be used. It is important that the spelling of an Estonian personal name shall be in accordance with the rules of orthography of the Estonian language, and the spelling of a non-Estonian personal name shall be in accordance with the rules of orthography of the relevant language. The name shall be applied: 1) on the basis of the Latin name entered in the source document according to the transcription rules for non-Estonian personal names; 2) in the absence of the possibility specified above, by the transcription of the non-Latin name entered in the source document with Estonian-Latin letters, which shall be done according to the transcription rules for non-Estonian personal names or, in the absence of the rules, on the basis of the recommendation of the Office of Onomastic Expertise[21].

[18] Lithuania: Judgement of the Constitutional Court of 21 October 1999, Case No. 14/98.

[19] Lithuania: Judgement of the Constitutional Court of 27 February 2014, Case No. 14/98.

[20] The Names Act entered into force on 31.03.2005, RT I 2005, 1, 1. The amended version in English is available at: https://www.riigiteataja.ee/en/compare_wordings?grupiId=100166&vasakAktId=508112013004

[21] Institute of the Estonian language, more information at: https://www.eki.ee/EN/.

12. Questions on recognition of same-sex marriages or partnerships are also sensitive in the Baltic States. Both Lithuania and Latvia are fairly conservative in this regard. None of these countries have adopted any laws allowing the same-sex couples to make their relationship documented. Despite a fact that Latvia can be considered as more liberal country in comparison to Lithuania (e.g. in case of artificial fertilization), nevertheless, political discussions reveal that at least the legislative power institutions are quite conservative in their views. There has been a political discussion in Latvia regarding partnership law since 1999. The law was supposed to be gender neutral. The draft law was rejected by Latvian Parliament in March 2018. It is also worth remembering that in 2005 Latvia introduced amendments to Article 110 of the Constitution by adding that "marriage is a union between a man and a woman". The amended rule banned same-sex marriages. Despite the fact that these rules are substantive rules, it is impossible to underestimate their significance also for the recognition of the same-sex marriages or partnerships concluded abroad. They show general tendencies in this regard. In terms of legislative initiatives situation in Lithuania is very similar. However, a general approach towards recognition of same-sex marriages is changing. In the new ruling the Lithuanian Constitutional Court[22] accepted to recognize the same-sex marriage concluded abroad. However, extent of the application of this ruling is very limited.

13. In Estonia the Registered Partnership Act from 09.10.2014[23] allows same-sex couples to register their relationship in form of "cohabitation agreement" as of 01.01.2016. The Act includes provisions applicable both to opposite-sex and same-sex couples. The same-sex couples nevertheless cannot marry or jointly adopt children. This Act provides that a registered partnership registered in foreign state is valid in Estonia in accordance with the provisions of the Private International Law Act. This Act entered into force without implementing provisions[24]. There were a lot of political debates concerning adoption of such provisions. Due to lack of the implementing provisions the cases related to the matter were discussed in Estonian courts. The Estonian Supreme Court also expressed its opinion in the matter.

14. The draft act on Same-Sex Partnership was introduced in February 2016 aiming to further regulate same-sex couples' position[25], but it did not receive required support in the Estonian Parliament.

15. It is important to note that in accordance with the § 1 of the Family Law Act from 18.11.2009[26] "a marriage is contracted between a man and a woman". Additionally the § 10 of this Act among grounds on considering that marriage is void lists "persons of the same sex are married". Therefore Estonia did not recognize same-sex marriages concluded elsewhere. The Estonian courts apply public order clause when denying recognition of such marriages. It is interesting to follow the changes in the Estonian courts application of the public clause in the marriage matters. The Circuit Court of Tallinn in its decision from August 27, 2014, stated that "the mere fact that Estonian law does not allow same-sex marriage does not mean that the law of the country where same-sex marriage is allowed is contrary to Estonian public policy"[27]. In 2016 the Administrative Court of Tallinn in its decision stated that "The legislator has made an informed choice between whom marriage can be contracted according to Estonian law and the laws in force in Estonia do not allow for marriage between same-sex persons and do not recognize cohabitation between them. Consequently, recognizing same-sex marriage in another country would be contrary to Estonian law, the essential principles of Estonian law and the

[22] Lithuania: Judgement of the Constitutional Court of of 11 January 2019, ruling No. KT3-N1/2019, case No. 16/2016.

[23] The Registered Partnership Act entered into force on 01.01.2016, RT I, 16.10.2014. The English text is available at: https://www.riigiteataja.ee/en/eli/527112014001/consolide.

[24] The draft provisions in Estonian are available at: https://www.riigikogu.ee/tegevus/eelnoud/eelnou/18e8dd8f-b83e-4218-8f92-82a438804790/Kooseluseaduse%20rakendamise%20seadus/.

[25] The text in Estonian available at; https://www.riigikogu.ee/tegevus/eelnoud/eelnou/7c1c0f59-02c2-45d8-b9d2-05b4811ade1c/Paarkonna%20seaduse%20eeln%C3%B5u%20(151%20SE%20I)/.

[26] The Family Law Act entered into force 01.07.2010, RT I 2009, 60, 395. The English text is available at: https://www.riigiteataja.ee/en/eli/530102013016/consolide.

[27] The Circuit Court of Tallinn decision no. 3-13-1808.

purpose of the legislator"[28]. The Supreme Court stated in its decision as follows in relation to recognition of same sex marriages: "the Family Law Act precludes the contracting of a same-sex marriage in Estonia; it does not preclude the recognition of such marriages that are contracted elsewhere in the world. It is required by law that a foreign marriage, which was performed in accordance with the laws of the married couple's country of residence, must also be considered as valid in Estonia. Such a marriage may be considered invalid only if it manifestly violates the important principles of the laws of Estonia. According to the Chamber's initial estimation, it is legally debatable whether considering a same-sex marriage contracted abroad to be valid would be in breach of the important principles of the laws of Estonia". The Estonian Supreme Court in its ruling from June 2017 also stated that same-sex couples have a right to the protection of family life.

16. The application of the EU Regulation 2016/1191 on the circulation of public documents is also important in the field of recognition of status. Baltic states took steps towards the implementation of the provisions of the regulation that require adoption of national rules. There is a draft governmental resolution prepared by the Lithuanian Ministry of Justice[29]. The draft determines the competent central authority - The Ministry of Justice. In Latvia amendments of the Document Legalization Law[30] are planned, but they have not been adopted so far.

17. In Estonia the EU Regulation is applicable from February 16, 2019 and several public documents are no longer required to be submitted in Estonia with an Apostille. This Regulation applies to public documents issued by the authorities of a EU Member State in accordance with its national law which have to be presented to the authorities of another Member State and the primary purpose of which is to establish one or more of the following facts: birth, death, name, marriage (including capacity to marry and marital status), divorce, adoption, parenthood, domicile and/or residence. Estonian authorities accept the mentioned documents in Estonian, Russian and English, so translation of the documents in these languages is not required. If the document is in another language, the document must be translated (unless a multilingual standard form is attached to it).

1.2. Principles of status recognition and denial of status recognition

18. Lithuanian law does not provide special rules on recognition of surnames. In case of name, the main issue is not the recognition of the document itself (e.g. Birth certificate, marriage certificate or other) but rather the entry of the document. In this case no particular rules exist. The cases are related to the change of entries in the Lithuanian documents, in which the name of the applicant has been written in accordance with Lithuanian language rules and thus differ from the name in original document.

19. Decision of the courts in regard of names, irrespectively whether it is an identity card/passport or a civil registry act, are almost identical and the grounds for recognition of names are the same. The courts repeat the argumentation provided by the international tribunals. Particularly, the courts refer to the following cases:

— The case-law of the CJEU. Particularly the following judgements were mentioned: *Sayn-Wittgenstein*, *Runevic-Vardyn and Wardyn*, *Nabiel Peter Bogendorff von Wolffersdorff*, *Garcia Avello* and *Grunkin Paul*.

[28] The decision of the Administrative Court of Tallinn no. 3-15-2355.

[29] Government of the Republic of Lithuania 29.06.2018, *Lietuvos Respublikos Vyriausybės nutarimo "Dėl institucijų, atsakingų už Europos parlamento ir tarybos reglamente (ES) Nr. 2016/1191 nustatytų funkcijų vykdymą, paskyrimo" projektas*, available at https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/28ac2c607b5c11e89188e16a6495e98c?positionInSearchResults=2&searchModelUUID=4558449a-adf6-4d9a-980e-db2c5f73b4e1

[30] Dokumentu legalizācijas likums, Law of 22 March 2007, "Latvijas Vēstnesis", 56 (3632).

— The case-law of the ECtHR, namely: Znamenskaya v. Russia[31], Johansson v. Finland[32], Mentzen v. Latvia[33], Bulgakov v. Ukraine[34], Güzel Erdagöz v. Turkey[35].
— The decision of the UN Human Rights Committee Raihman v. Latvia[36].

The courts usually recognize that the refusal to issue a birth or marriage certificate with the different name than the one in the foreign document violates legitimate expectations of the applicant, moreover it is an interference in private and family life, as well as such decision causes great inconveniences both in private and in public life.

20. The issue of acceptance of names from the foreign birth certificates (Portuguese, German) was several times considered by Latvian courts[37]. Notable that Latvian courts, even after the UN Committee decision still rejected M. Raihmann application to spell his name in original form, without adding Latvian endings[38].

21. Due to the regulation that allows spelling of the non-Estonian name in accordance with the rules of orthography of the relevant language (in accordance with the law of the nationality of the person), this issue did not raise particular questions in Estonia. It is worth mentioning that in practice the Estonian authorities allow to spell the name in accordance with the nationality stated in a birth certificate (as it was custom for the USSR birth certificates), even if the person holds an Estonian passport.

22. The question of recognition arises also in other cases: adoption (recognition)[39], fatherhood by declaration[40]. However, probably the most debatable is the issue of recognition of marriages, above all – same-sex marriages. Both in Lithuania and Latvia there are special rules for the recognition of marriage, in Latvia – also for a divorce. Marriage, legally concluded in other country is being recognized in Lithuania without particular preconditions. Nonetheless, there is no information as far regarding practice of recognition or non-recognition of same sex marriages. 1.2.” Therefore, a marriage that is valid abroad will be valid in Lithuania, except situations of evident circumvention. So far, there was only one case related to the recognition of same sex marriage in Lithuania. In January 2019 the Constitutional Court of Lithuania ruled in the case related to same-sex marriage. The claimants in the main procedure were two men (one - Lithuanian citizen, the other – Belarussian citizen) who concluded marriage in Denmark. Then the non-EU citizen spouse in his capacity as a member of the EU citizen’s family was seeking to obtain the right to reside lawfully in Lithuania for more than three months and the authorities refused to grant him such permit. The Supreme Administrative Court of Lithuania, before which the case was pending, asked the Constitutional Court to explain whether “*Item 5 of Paragraph 1 of Article 43 (wording of 28 November 2006) of the Republic of Lithuania’s Law on the Legal Status of Aliens, insofar as the said item does not stipulate that, in the event of family reunification, a temporary residence permit in the*

[31] ECtHR 2 June 2005, *Znamenskaya v. Russia*, No 77785/01.
[32] ECtHR 6 September 2007, *Johansson v. Finland*, No 10163/02.
[33] ECtHR 7 December 2004, *Mentzen v. Latvia*, No 71074/01.
[34] ECtHR 11 September 2007, *Bulgakov v. Ukraine*, No 59894/00.
[35] ECtHR 21 October 2008, *Güzel Erdagöz v. Turkey*, No 37483/02.
[36] The UN Human Rights Committee decision 28 October 2010, Raihman v. Latvia, No 1621/2007.
[37] Supreme Court of Latvia of 1 November 2017, No A420398814, available at: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi; judgment of the Administrative Regional Court of Riga of 4 March 2014, No. A420383312;judgement of the Administrative District Court in Riga of 19 July 2013, No. A420383312; judgement of the Supreme Court of Latvia of 9 July 2012, No A420598410.
[38] ECtHR 6 September 2007, *Johansson v. Finland*, No 10163/02.
[39] [35] Administrative Regional Court in Riga 26 April 2016, No A420579912.
Court of Appeal of Lithuania 12 September 2011, case No 2T-261/2011, available at: http://eteismai.lt/byla/116713249078409/2T-261/2011?word=%C4%AFvaikinimo%20pripa%C5%BEinimas; 22.06.2010, cane No 2T-193/2010, available at: http://eteismai.lt/byla/82936319879925/2T-193/2010?word=%C4%AFvaikinimo%20pripa%C5%BEinimas
[40] Court of Appeal of Lithuania 15 March 2011, case No 2T-150/2011, available at: http://eteismai.lt/byla/50198367172188/2T-150/2011?word=t%C4%97vyst%C4%97s%20pripa%C5%BEinimo.

Republic of Lithuania may also be issued to a foreign national in cases where a marriage or registered partnership concluded by the foreign national in another state with a person – a citizen of the Republic of Lithuania – residing in the Republic of Lithuania is not recognised in the Republic of Lithuania due to the prohibition on concluding a same-sex marriage or same-sex registered partnership, although the foreign national and the Lithuanian citizen have built up such a relationship whose content corresponds to the concept of the family, is in conflict with Paragraphs 1 and 4 of Article 22, Paragraph 1 of Article 29, and Paragraphs 1 and 2 of Article 38 of the Constitution of the Republic of Lithuania, as well as with the constitutional principle of a state under the rule of law". The court refrained from issuing the judgment until the CJEU ruled in Coman case[41] and in its ruling made a direct reference to the ruling of the CJEU. Finally, the Constitutional Court delivered a ruling and stated clearly "*a refusal to issue such a permit may not be based solely on the gender identity and/or sexual orientation of a foreign national*". The Court hasn't considered private international law rules in this case. Moreover, the ruling cannot be overestimated. It is still not clear how far going implications it has. In this case the Court opened the doors for the same-sex couples married abroad to request a residence permit in Lithuania without any further discrimination. However, married couples have much more rights under Lithuanian law, for instance to adopt children together or bear common surname. In case of further same-sex couples requests, e.g. related to adoption etc. the process of recognition of their marriage will have to start all over again. As long as there is no explicit rule on recognition of such marriages, same-sex couples will face the difficulties in acquiring the same rights as traditional couples. Nevertheless, the ruling of the Constitutional Court is guidance for further development of law in this regard.

23. Article 12 of the Introductory part to the Latvian Civil Law provides that "A dissolution or declaration as annulled of a marriage of citizens of Latvia, done in a foreign state, shall also be recognized in Latvia, except in a case where the grounds submitted as the basis therefore do not conform to Latvian law and are in conflict with the social or moral standards of Latvia"[42]. The Law on Registration of Civil Status Documents provides that "if a citizen of Latvia or a non-citizen of Latvia concludes marriage outside the Republic of Latvia in conformity with the laws of such foreign state in the territory of which the marriage is concluded, such marriage shall be valid in the Republic of Latvia, if the provisions of Sections 32, 35, 37 and 38 of the Civil Law have been complied with"[43].

24. In Estonia there were several cases related to same-sex marriages concluded abroad and failure to issue implementing legislation for the Registered Partnership Act[44]. The same-sex marriages were not recognized, though the right to protection of family life was confirmed[45].

25. In 2015 the Harju county authorities[46] refused to enter to the Estonian population register the marriage of Ats Joorits, a Swedish national residing in Estonia, with another man, an Estonian citizen. The marriage was concluded in Sweden. The reasoning of the decision was based on the fact that the Estonian laws do not recognize same-sex marriage. The authorities stated that the application of the law of another country in this case would be manifestly contrary to the Estonian public order (the general principles of the Estonian law). The case was brought to the court. The County Court of Harju refused to register the marriage between two men. The couple appealed this decision. The Circuit Court of Tallinn[47] ruled that the marriage must be entered into the Estonian population register. It stated that the mere

[41] Please refer to the judgment of the Court (Grand Chamber) of 5 June 2018: http://curia.europa.eu/juris/document/document.jsf?text=&docid=202542&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1120903.

[42] The Civil Law of Latvia of 28 January 1937, "Valdības Vēstnesis", 41, 20.02.1937.

[43] The Law on Registration of Civil Status Documents of 29 November 2012, "Latvijas Vēstnesis", 197 (4800), 14.12.2012.

[44] Order of the Supreme Court of Estonia 5-17-42. The text in English is available at: https://www.riigikohus.ee/en/constitutional-judgment-5-17-42.

[45] Decision of the Supreme Court of Estonia 3-3-1-19-17. Overview of the decision in English is available at: https://www.riigikohus.ee/en/news-archive/same-sex-couples-also-have-right-protection-family-life.

[46] The Harju county authorities decision no. 14-4/3 from 16 September 2015.

[47] The Tallinn Circuit Court Ruling no. 3-15-2355 from 24. November 2016.

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fact that "the Estonian law does not provide for this kind of marriage does not mean that Swedish law must be deemed as being in contradiction with public order. A contradiction with substantial principles of Estonian law or public order would arise first and foremost if the application of the law of a foreign country brought with it a contradiction with the general principles of the Estonian Constitution or norms of penal law or resulted in the infringement of fundamental rights. Recognition of marriages of persons living in another country that are consistent with that country's laws is not indicative of any of these cases". The decision of the Circuit Court of Tallinn requiring the Harju County authorities to enter into the Population register the same sex marriage came into force on December 28, 2016[48].

26. In the beginning of 2017 the Administrative Court of Tallinn asked the Police and Boarder Guard Board to review a residence permit application that was previously denied. The application concerned a USA citizen who had concluded a same-sex marriage in a foreign country with an Estonian woman, and applied for a residence permit in order to live with her same-sex spouse in Estonia. The Police and Boarder Guard Board appealed the decision, however, the Circuit Court of Tallinn reached the same decision as the Administrative Court of Tallinn, and required the Police and Boarder Guard Board to issue a residence permit. The Court clarified that there are no provisions in the Estonian law that prohibited issuing of a residence permit to a person residing with her spouse for the duration of a court action, including when it concerns the marriage of a same-sex couples concluded in a foreign country. The couple longed an appeal to the Estonian Supreme Court, but their case was dismissed in April 2018. Then the couple entered into a cohabitation agreement regulated by the Registered Partnership Act since the Supreme Court had ruled that this legal act constituted a part of the Estonian legal order. This allowed the American partner to reside in Estonia. The Supreme Court explained that right to family life in the context of the Constitution has not been made conditional on the gender or sexual orientation of the family members.

27. The application to recognize a cohabitation agreement concluded at the Estonian Embassy in France was also discussed in Estonia. The applicant considered it necessary for the cohabitation agreement to be recognized in order to fulfill the conditions stated in the § 15 (2) of the Registered Partnership Act. This provision states that: "during the period of validity of a registered partnership contract, a registered partner may only adopt the other registered partner's child pursuant to the procedure provided for in Chapter 11 of Part 2 of the Family Law Act". The court did not consider it necessary to recognize the cohabitation agreement and refused to accept the application. The court stated that in the absence of both the implementing provisions concerning the cohabitation agreement and the grounds for recognition as the agreement was concluded in the Estonian Embassy in accordance with the Estonian law provisions, therefore the application was not submitted in defense of the applicant's statutory right or interest. This view was also upheld by the circuit court, confirming that a partnership registered abroad at the Estonian Embassy does not require separate recognition in Estonia[49].

28. It is also worth mentioning the cases related to requirement to present by the foreign national a certificate of legal capacity to contract marriage in Estonia when it concerns conclusion of the cohabitation agreement in the context of the same-sex couples rights' recognition. In one of the cases the Ukrainian citizen wanted to conclude a "cohabitation agreement" with the Estonian citizen[50]. He was required to provide a certificate of legal capacity to contract marriage from the country of his residence or nationality, and applied to the County court to obtain consent to enter into the "cohabitation agreement" without providing this certificate as stated in § 39 (5) of the Vital Statistics Registration Act[51]. The Cou-

[48] V. VOOGLAID, "Judicial Activism in Distortion of the Concept of Marriage. Comment to the Tallinn Circuit Court Ruling from 24 November 2016 on the Case Ats Joorits vs Harju County Government (3-15-2355)", *Juridica* 2018, no. 1.

[49] Circuit Court of Tallinn 29 April 2016, no. 2-16-2214/6,

[50] County Court of Harju 23 August 2016, no. 2-16-11965/5.

[51] "(5) A citizen of a foreign state whose residence is in a foreign state or who has resided in Estonia less than six months immediately before the submission of an application for marriage and who is unable to submit a certificate of legal capacity to contract marriage with good reason may be granted permission for contraction of marriage without the certificate by the court in whose territorial jurisdiction the marriage is intended to be contracted. Permission is valid for six months".

nty Court found that although the wording of the said law had not been amended since the Partnership Act entered into force, persons wishing to enter into a “cohabitation agreement” must be treated on the same basis as persons concluding marriage. Thus, after assessing the evidence, the court allowed the third-country national to enter into a “cohabitation agreement” without this certificate.

29. The County court also gave a permission to enter into the cohabitation agreement without a certificate of legal capacity to contract marriage to the Israeli citizen, who wanted to conclude such agreement with the Lithuanian citizen. The Lithuanian citizen had his residence place and permit in Estonia. Lithuania has also issued him a certificate of legal capacity to contract marriage. The court did not found any obstacles for the Israeli citizen to marry, and confirmed that there “the application of the person who wishes to enter into the cohabitation agreement cannot be treated differently than the application of the person who wished to marry”[52].

30. The influence of the ECJ ruling is visible in the Estonian case law, as in September 2018 the court stated that in the matters related to issue of residency permits same-sex couples must be treated the same way as opposite-sex couples. In June 2019 this decision was confirmed by the Supreme Court of Estonia. On 21 June 2019, the Supreme Court of Estonia stated in two cases that the refusal to grant a residence permit to a foreign same-sex partner of an Estonian citizen was unconstitutional[53]. The court ruled that the section preventing the granting of temporary residence permits to same-sex partners registered in Estonia was unconstitutional and invalid in respect of the Aliens Act[54]. In accordance with the principles of human dignity and equal treatment guaranteed by the Constitution of Estonia, the Supreme Court found that family law also protected the right of people of the same-sex to live in Estonia as a family.

31. It is also worth mentioning that the Estonian courts also relied on the Personal Data Protection Act[55] which in accordance with the § 21 (1) and the § 24 (3) gives a person the right to demand that his or her marital status is correctly recorded in the Population registry.

32. It should be noted that in Estonia according with the current case law, the courts offer same-sex couples protection guaranteed by the Constitution. If there are situations when there is no law provision on the implementation of the Registered Partnership Act a solution is found in the law guaranteeing protection to the family life (the entry into cohabitation agreement and adoption). The court thus obliges to allow enter into cohabitation agreement without a marriage certificate or to perform required entries in to the Population registry. Nevertheless, it does not mean that cohabitation is equal to marriage as defined in the Constitution or the Family Law Act.

33. This was the main ground to refuse acceptance of the names acquired abroad in the first cases in **Lithuania**. The courts referred in this case to the public policy clause set up in the art. 1.11 of the Lithuanian Civil Code. They were following the explanation of the Constitutional Court regarding the constitutional status of the Lithuanian language as an official language of the State. The entries in ID documents, written differently than the Lithuanian language requires (eg. using “w” instead of “v”), were considered to be a violation of a constitutional status of the official language and thereof would have diminished its significance in Lithuania. This practice has changed lately and courts do not apply the public policy clause anymore.

Vital Statistics Registration Act from 20.05.2009, entered into force on 01.07.2010 (partially on 22.06.2009), RT I 2009, 30, 177. The English text is available at: https://www.riigiteataja.ee/en/eli/523012015006/consolide.

[52] County Court of Harju 26 August 2018, no. 2-18-10607/2.

[53] Supreme Court of Estonia 21 June 2019, no. 5-18-5. Please refer to: https://www.riigikohus.ee/et/lahendid/?asjaNr=5-18-5/17 [in Estonian].

[54] The Aliens Act entered into force on 01.10.2010, RT I, 3.4.2010. The English text is available at: https://www.riigiteataja.ee/en/eli/ee/518112013013/consolide/current.

[55] The Personal Data Protection Act entered into force on 01.01.2008, RT I 2007, 24, 127, The English text is available at: https://www.riigiteataja.ee/en/eli/503012019006/consolide.

34. Latvian courts deny to grant recognition for the names acquired abroad. The rules on writing names of both Latvian citizens and foreigners in Latvia are quite strict and generally require complying with Latvian language[56]. These rules were applied in order to justify denial of recognition. The courts in their rulings provided the same reasoning. The arguments were as follows:

— The adding of the letter "s" at the end of a name required by the Latvian language rules is unlikely to cause difficulties for a person while taking advantage of the EU freedoms. It worth to mention, that Latvian passports contain both "*latvianized*" form of the name and the original one (on the other page). Consequently, the courtes concluded that the restriction is not disproportionate and thus no infringement can be detected.
— The fact that Latvia became a member of the European Union does not diminish the role of the Latvian language as a state language in an independent in a democratic republic, which results in a legitimate requirement to follow the norms of the Latvian language in the writing and reproduction of spelling words. The Mencena case[57] assesses the proportionality of the violation of a person's right to privacy in the context of the use of the official language.
— The Latvian Constitutional Court in a judgment of 21 December 2001 in case No. 2001-04-0103 has justified the display of names of a different language in Latvian language, adapting them to the grammatical features of the Latvian language, since the grammatical basis of the Latvian language is the terminals which indicates the meaning of the generic and proper names, singular or plural, as well as the function of the words in the sentence. When assessing the proportionality of a restriction, the role of the Latvian language as a state language in Latvia has to be taken into account. The purpose of the restriction is increasing the influence of the state language, a means of social integration. In Latvia, the state language is considered the essential part of the democratic state, therefore the restriction established in Section 19 of the State Language Law is proportional.

35. Due to the regulation that allows spelling of the non-Estonian name in accordance with the rules of orthography of the relevant language (in accordance with the law of the nationality of the person), this issue did not raise particular questions in Estonia.

II. Process of recognition

1. Rules and procedure of recognition

36. There are no specific rules or procedures on recognition. Lithuanian, Latvian and Estonian authorities will recognize the status acquired abroad if it is confirmed by the valid document (e.g. birth certificate). In all three countries, usually, recognition is based on the documents confirming the status in question provided by the applicant. In all of the cases the courts and other authorities considered recognitions of the status that was registered in official registry.

37. In order to recognize the status by Lithuanian, Latvian or Estonian civil registry authorities, the status has to be documented. This requirement is quite strict. A certified copy of the status registration has primarily the value of proof.

38. The rules regarding civil status acts provide the information in this regard. In order to include foreign birth certificate or marriage certificate in Lithuanian civil registry and to issue a Lithuanian birth certificate it is required to submit the document issued by the foreign official institution (e.g. birth

[56] Section 19 of the Official Language Law of 9.12.1999, "Latvijas Vēstnesis", 428/433 (1888/1893), 21.12.1999., "Ziņotājs", 1, 13.01.2000. Available at: https://likumi.lv/ta/en/id/14740-official-language-law.

[57] ECtHR 7 December 2004, *Mentzen v. Latvia*, No 71074/01.

certificate, statement of birth record or other document). Latvian and Estonian[58] authorities also require presenting a document issued by a public authority of a foreign state. However, in case of Lithuania civil registry will include a foreign birth or marriage certificate into Lithuanian register only under certain conditions. Birth certificate will be included only if the parents or one of them are Lithuanian citizen or a person acquired Lithuanian citizenship. There is no such rule regarding marriages, thus, Lithuanian civil registration rules do not prohibit inclusion of the foreign marriage certificate into Lithuanian civil registry even if both of the spouses are foreign citizens. However, the marriage concluded abroad still has to comply with the requirements of the provisions of Articles 3.12–3.17 of the Lithuanian Civil Code. These articles provide conditions for conclusion of marriages. These are the requirements to be of a different sex, proper age (18 years), to have active legal capacity, prohibition of polygamy, prohibition to conclude marriage between close relative, finally, stipulates voluntary character of marriage. Nonetheless, a person who intends to merry before the age of 18 could request a court to reduce the legal age of consent to marriage, but by no more than three years. Consequently, the earliest age that a person can conclude a marriage in Lithuania is 15 years. This means that also in case of a marriage concluded abroad, in a situation when spouses were of 15 years old at the time of conclusion of marriage could be recognized in Lithuania. The question if in such case the conclusion of a marriage abroad would have to be preceded with a court or other relevant authority decision remains open.

39. The rules on registration of civil status are quite strict in this regard. If the marriage is concluded in a foreign country other than the European Union Member States in which the religious marriage is tantamount to civil marriage and is not included in the state civil registry, the religious marriage cannot be also registered in Lithuanian civil registry. Consequently, a religious marriage concluded in the EU Member State shall be recognized.

40. In Latvia and Estonia official documents only are accepted. In cases of recognition of fatherhood, it is satisfactory to have a notarial act authenticated with Apostille or legalized. There are no additional requirements for recognition. Particularly the civil registrar or the court does not check whether the foreign authority was competent to issue the document or if it applied the proper law.

41. All the documents should be translated to Lithuanian or respectively Latvian language and the translation should be certified by the notary. In Estonia the documents in English and Russian are accepted (otherwise they must be translated into Estonian, Russian or English). If the documents have been translated, the evidence shall be submitted with a translation confirmed by a notary authority, consular officer or sworn translator. The foreign documents must be legalised or with a confirmed Apostille, unless the international agreement states otherwise.

42. The foreign civil registry acts are being registered in Lithuanian, Latvian or Estonian civil registry. As it was already mentioned above the authorities will refuse to recognize if the recognition would be against public policy clause. If the applicant is being refused to recognize his civil status or its element he has a possibility to appeal to the court.

43. In all three Baltic states, we can consider *de facto* recognition by choosing the place of registration as the connecting factor. The civil registrars are not applying conflict-of-laws rules in this case. In fact they are rewriting the data from the original document without any interference into its content, unless there is obvious violation of public order.

[58] Please refer to the main legal acts: 1) Vital Statistics Registration Act from 20.05.2009, entered into force on 01.07.2010 (partially on 22.06.2009), RT I 2009, 30, 177. The English text is available at: https://www.riigiteataja.ee/en/eli/523012015006/consolide, and 2) Population Register Act from 31.05.2000, entered into force on 01.08.2000 (partially on 01.01.2001), RT I 200, 50, 317. The English text is available at: https://www.riigiteataja.ee/en/eli/516012014003/consolide.

44. So far, there has not been any case law considering the consequences of the recognition. The majority of cases were related to the acceptance of a name. Courts accepted or refused the name as such. In case of refusal to recognize the original spelling of the name, it was being written according Lithuanian language rules, but the acquisition of name as such was not a matter of dispute. In other words, the change or acquisition of name abroad was being accepted, but the spelling of that name was not, and therefore, the name was rewritten according Lithuanian language rules, eg. "w" changed to "v", "x" to "ks" etc.

45. In Latvia the case law regarding recognition of names was unfavourable for the applicants and the recognition of names was not granted. The issue of names is not relevant for Estonia.

46. Recognition can also be based on a court decision. States have special rules for this king of recognition. In majority of cases, the usual rules related to recognition of foreign judgements apply. Noteworthy, that in the Baltic states if the irreconcilable status decisions were issued by the courts – the general rule on conflicting judgements will be applied. Moreover, in Lithuania, in case of decisions regarding name the courts are following the intention of the party. The fact if there is first registration or not is not so relevant in this case. For instance, if a person has two citizenships and accordingly two ID documents issued by different countries, the person decided which one to consider as the main one and the courts do not question this[59].

47. Decision on the family status can be recognized by the Court of Appeal of Lithuania according Article 809 of the Code of Civil Procedure of Lithuania[60]. An exequatur proceeding is needed for the decisions changing civil status and therefore, affecting civil registry entries need enforcement. The rules on civil status registry require the recognition of foreign judgement. The court can refuse to recognize a decision only if it is incompatible with public order.

48. The article 637 of the Civil Procedure Law of Latvia lists the grounds of non-recognition of foreign judgements[61]. The list is not different of the similar lists in other national laws. For instance, a foreign judgement can be denied to grant recognition in Latvia if it is incompatible with public order, if the defendant has not been properly informed about the case etc. In regard of the court decisions regarding judgements related to custody, guardianship and access rights the law provides additional grounds of non-recognition.

49. In accordance with the Code of Civil Procedure of Estonia from 20.04.2005[62] there are two types of proceedings related to recognition of court decisions and other enforcement instruments: A) of the Member States of EU, and B) other foreign states.

50. Ad A) In accordance with the § 619 of this Code its provisions are applicable to the the extent not otherwise provided by Council Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Council Regulation 2201/2003/EC concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000/EC, Regulation (EC) No 805/2004 of the European Parliament and of the Council, creating a European Enforcement Order for uncontested claims (OJ L 143, 30.04.2004, pp. 15–39), Regulation (EC) No 896/2006, Regulation (EC) No 861/2007, Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and other regulations of the European Parliament and of the Council.

[59] Vilnius District Court decision 10. October 2016, No I-4527-281/2016.

[60] Lietuvos Respublikos Civilinio proceso kodeksas, 28.02.2002, Law Nr IX-743, available at: https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454.

[61] The Civil Procedure Law of 14 October 1998, "Latvijas Vēstnesis", 326/330 (1387/1391), 03.11.1998., "Ziņotājs", 23, 03.12.1998. Available at: https://likumi.lv/ta/en/id/50500-civil-procedure-law.

[62] The Code of Civil Procedure entered into force on 01.01.2006, RT I 2005, 26, 197. The text in English is available at: https://www.riigiteataja.ee/en/eli/513122013001/consolide.

51. Ad B) In accordance with the § 620 of this Code “(1) A court decision in a civil matter made by a foreign state is subject to recognition in the Republic of Estonia, except in the case where:

1) recognition of the decision would be clearly contrary to the essential principles of Estonian law (public order) and, above all, the fundamental rights and freedoms of persons;
2) the defendant or other debtor was unable to reasonably defend the rights thereof and, above all, if the summons or other document initiating the proceeding was not served on time and in the requisite manner, unless such person had a reasonable opportunity to contest the decision and the person failed to do so within the prescribed term;
3) the decision is in conflict with an earlier decision made in Estonia in the same matter between the same parties or if an action between the same parties has been filed with an Estonian court;
4) the decision is in conflict with a decision of a foreign court in the same matter between the same parties which has been earlier recognized or enforced in Estonia;
5) the decision is in conflict with a decision made in a foreign state in the same matter between the same parties which has not been recognized in Estonia, provided that the earlier court decision of the foreign state is subject to recognition or enforcement in Estonia;
6) the court which made the decision could not make the decision in compliance with the provisions of Estonian law regulating international jurisdiction.

(2) A court decision of a foreign state is recognized in Estonia only if the decision has entered into force pursuant to the law of the state which made the decision unless, pursuant to law or an international agreement, such decision is subject to recognition and enforcement as of the time such decision can be enforced in the state of the location of the court which made the decision.
(3) A court decision of a foreign state is recognized in Estonia without a need to conduct separate court proceedings. However, adjudication of its recognition may be requested pursuant to the procedure prescribed in this Chapter for declaring a decision enforceable if there is a dispute on recognition or if it is necessary to a person due to another reason for the purpose of exercising his or her rights.
(4) If adjudication of another court matter depends on the recognition of a court decision of a foreign state, the recognition may be decided by the court adjudicating such court matter.

52. The acceptance of status is not limited to European Union or even States with whom a (bilateral) treat exists. For instance, in one of the cases[63] the problem was related to a surname of a child of Lithuanian-Syrian citizens living in Dubai. The court in its judgement referred to the case-law of the CJEU and the Framework Convention for the Protection of National Minorities and that grounds has recognized the name. Nevertheless, usually cases are linked to two or more EU Member States.

53. In all cases Latvian courts denied recognition of the surnames acquired abroad.

54. Cases in which acceptance of status was at stake usually were related either to registration of names in official register[64] or to entries in identity documents[65]. State of origin of the documents is very

[63] Vilnius District Court 22 November 2016 No. e2YT-45900-912/2016, available at: http://eteismai.lt/byla/155195518892758/e2YT-39600-912/2016?word=Dubajuje.

[64] Vilnius District Court decision 22 June 2016, No. e2YT-20181-592/2016, Vilnius District Court decision 12 April 2016, No. 2-53-727/2016; Vilnius District Court decision 10 October 2016, No e2YT-37412-430/2016; Vilnius District Court decision 11 April 2017, No. e2YT-12928-845/2017; Vilnius District Court decision 27 June 2017, No. e2-22851-820/2017. In all cases recognition was granted.

[65] Vilnius District Court decision 17 October 2016, No eI-6538-171/2016; Vilnius District Court decision 02 October 2017, No. eI-3580-764/2017; Vilnius District Court decision 10 October 2016, No I-4527-281/2016. In all cases recognition was granted.

different. In majority of cases, these are EU Member States, sometimes third countries[66]. The documents and entries in registries are usually related to Lithuanian citizens or their children, who could have also double nationality[67].

55. Not applicable for Latvia, because the only cases related to recognition were about the names and in those cases the recognition was denied irrespectively of the state of origin.

2.2. Other requirement for recognition

56. In terms of analysis of the requirements of recognition of the civil status acquired abroad three more issues can be considered. First, the issue of the unknown foreign status: whether is possible to consider to recognize status non-existing under the national laws. Unfortunately, there are neither case-law regarding the "recognition" of a status that is absolutely unknown to the Lithuanian, Latvian or Estonian law nor the relevant provisions how to proceed in such a case.

57. Other important issues are connection to the State establishing the status and a certain period of time. Regarding the latter there is no requirement that the status has to be established for a certain time or that there is a period of time during which parties have to inform about the marriage concluded abroad or to provide a birth certificate issued abroad. Regarding the second issue, neither the courts nor the other authorities do not require any connection between the State of origin and the person involved. In most cases this issue was not even raised. It is sufficient that the document is valid in the State of origin. For instance, in one of the cases it was enough for the applicant to have both Lithuanian and French citizenships, habitual residence in Lithuania and to provide authorities with the French passport in which the name was written in the form acceptable for the applicant.

2.3. Revision

58. Lithuanian law does not foresee any particular revision rules in case if the status is recognized on the basis of the foreign court judgement. In case of recognition of marriage the case is different. First exception is set up in the Civil Code of Lithuania. Namely, article 1.25 par. 4 provides that "a marriage validly performed abroad shall be recognized in the Republic of Lithuania, except in cases when both spouses domiciled in the Republic of Lithuania performed the marriage abroad with the purpose of evading grounds for nullity of their marriage under Lithuanian law". Therefore, the court could revise in the parties were not trying to avoid the application of the Lithuanian law. Secondly, the rules on the registration of civil status require checking whether a marriage concluded abroad does not violate articles 3.12- 3.17 of the Lithuanian Civil Code. Latvian and Estonian laws do not foresee any particular revision rules in case if the status is recognized on the basis of the foreign court judgement.

59. In Estonia among grounds for review in accordance with the § 702 of the Code on Civil Procedure the following worth mentioning is listed "(8) the European Court of Human Rights has established a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, or Additional Protocols belonging thereto in the making of the court decision, and the violation cannot be reasonably corrected or compensated in any other manner than by review".

60. The rules on the registration of civil status clarify that the registrar can ask the parties to provide additional documents, namely ID document, divorce judgment or the death certificate.

[66] Vilnius District Court decision 22 November 2016, e2YT-39600-912/2016; Vilnius District Court decision 19 December 2016, No e2YT-46636-432/2016.

[67] Kaunas District Court decision 23 February 2017, No eI-405-402/2017 (children held both Lithuanian and British nationality, the court granted recognition of name).

61. Additionally, could be added, that in some cases even if there are suspicions of circumvent the law the authorities do not take any steps in order to clarify if the status should be recognized. The best example is the recognition of status of a child born by a surrogate mother. According to the Lithuanian authorities even if it is evident that a couple (or at least a woman) which in the birth certificate are indicated as the parents of the child cannot be biological parents of it (eg. due to the age), the authorities will not check the authenticity of that fact. Even though that surrogacy arrangement are prohibited in Lithuania. The same approach is applicable for Estonia.

2.4. Database entry requirement

62. In Lithuania, Latvia and Estonia the status is accepted in the substance. In none of the cases the document itself raised any legal concerns. The documents are primarily the means of documentation/proof. As a consequence of recognition foreign civil registry acts have been included into national civil registry (Lithuanian – Centre of Registers, Latvia – Civil registry offices, Estonia – the Population Register). On the other hand, if the civil registry act is not included into national registry it does not preclude to recognize the status anyway.

63. The limits of the recognition in case of inclusion of foreign civil registry acts into national registries is not entirely clear. The existence of civil status can be proved also on the basis of a primary foreign document. |For instance, in order to be divorced foreign citizens in Lithuania provide the court the original marriage certificate and there is no requirement to have the marriage registered in (or included into) Lithuanian civil registry. The other situation, that requires foreign citizens to prove that they are marriage is the case of adoption. Lithuanian law allows foreigner citizens to adopt a child in Lithuania only if they are married. Since the law does not provide any further details in this regard, the question if it is required to include foreign marriage certificate into Lithuanian civil registry is open. However, such a requirement can be considered as exorbitant.

2.5. Change of status consequences

64. In Lithuania change of status in the state of origin does not affect directly the status in the second state. In one of the cases the parties had dispute over the property[68]. One of the parties claimed that this is marital property and should have been distributed accordingly, the party claimed that the marriage between him and the claimant was void. From the documents presented by the parties it became evident that the marriage concluded in the USA but not formally accounted in Lithuania, later was announced void in the state of origin. The issue of the validity of marriage and its recognition was a preliminary question in the case. The court pointed out several important aspects: 1) the existence of marriage is essential in that case, 2) the fact that there was lack of entries about the marriage in Lithuanian civil registry does not presume that that marriage is not existing or invalid, 3) Lithuanian courts do not have jurisdiction over the case of the potential annulment of the marriage. Finally, the court decided that the presumption that the marriage had been concluded should be recognized and distributed the property as marital property of the spouses.

65. In Latvia change of status in a foreign state does not have direct effect, it needs to be recognized (e.g. the court decision could be provided and recognized accordingly).

66. In Estonia change of status in a foreign state does not have direct effect, it should be recognized.

[68] Court of Appeal of Lithuania of 17 October 2017, No 2A-535-580/2017.

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