



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2717/2016\*\*, \*\*\*

<i>Communication submitted by:</i>	Valery Moyseenko (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Ukraine
<i>Date of communication:</i>	24 August 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 20 January 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	8 November 2019
<i>Subject matter:</i>	Spelling modification of author's name and surname in international passport
<i>Procedural issues:</i>	Non-substantiation of claims; exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to privacy; right to use own language; member of a minority community
<i>Articles of the Covenant:</i>	17 and 27
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Valery Moyseenko, a citizen of Ukraine of Russian origin, born in 1960. He claims to be the victim of a violation by Ukraine of his rights under articles 17 and 27 of the Covenant. The Optional Protocol entered into force for Ukraine on 25 October 1991. The author is not represented by counsel.

#### The facts as submitted by the author

2.1 The author is a national of Ukraine of Russian ethnicity who was born in Donetsk, Ukraine, to Russian parents. On his birth certificate,<sup>1</sup> his given name, patronymic and

\* Reissued for technical reasons on 19 December 2019.

\*\* Adopted by the Committee at its 127th session (14 October–8 November 2019).

\*\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany and Hélène Tigroudja.

<sup>1</sup> Issued at the time by the authorities of the Union of Soviet Socialist Republics.



surname were written in Russian (Моисеенко Валерий Анатольевич). The analogous form of his name in the Ukrainian language is Моїсеєнко Валерій Анатолійович. All the letters of his full name written in the Russian language are part of the Ukrainian alphabet. In his Ukrainian internal passport (the main domestic identification document), his name is written in both the Ukrainian and Russian languages.

2.2 In May 2009, the author acquired an external/international passport for international travel. In this document, his names were written in the Ukrainian language, together with a Latin transliteration spelled Moiseienko Valerii. The author's personal wishes and consent were not taken into consideration, since the procedure for obtaining an international passport does not allow the individual to choose the way in which his or her names will be spelled in the passport. Out of the two versions of the author's name (in Ukrainian and in Russian) in his internal passport, the authorities chose for the purposes of transliteration the one in Ukrainian, which does not match the name on the author's birth certificate, and which does not reflect the fact that the author is of Russian origin, a member of the Russian-speaking minority.<sup>2</sup> This happened despite the fact that according to the Civil Code of Ukraine,<sup>3</sup> individuals have the right to transliteration of their family name and first name in accordance with their national tradition.

2.3 In March 2010, the author filed a claim with the State Department for Citizenship, Immigration and Registration of Individuals, of the Ministry of Internal Affairs of Ukraine, requesting his name to be officially transliterated in the passport on the basis of its Russian form and the passport to be reissued. On 23 March 2010, the District Administrative Court of Donetsk rejected his claim for the Russian language to be used as the basis for transliterating his name into Latin letters in the international passport, on the grounds that Russian is not the official language in the State, and in compliance with the rules for passport information and the basis for transliteration. The court ruled that he had not taken all the measures necessary to exercise his right to transliteration of his name in accordance with the national tradition as he had not submitted "documents issued by the respective authorities of a foreign State". The author explains that he did not have such documents issued by a foreign State. Moreover, such requirement is not to be found in the law but in secondary legislation,<sup>4</sup> and the author considers it discriminatory as it provides this opportunity only for those who have such foreign documents.

2.4 On an unspecified date, the author filed an appeal with the Appellate Administrative Court of Donetsk, which was rejected on 27 May 2010. On an unspecified date, he appealed to the Cassation Court of Ukraine. On 14 February 2014, his cassation appeal was rejected. This decision is final and cannot be appealed.

2.5 On 19 June 2014, the author lodged an application with the European Court of Human Rights. However, at the material time of his communication, he had not received any answer insofar as the postal service in Donetsk had at that time ceased to work following a decision of the Government of Ukraine. On 25 November 2014, the author sent a fax to enquire about the status of his application, to no avail. Therefore, the author considers that the Court did not initiate any examination of his case.<sup>5</sup>

<sup>2</sup> The author also did not accept the Latin transliteration of his name because of its ambiguity: it was not clear in which language it was written, how was it spelled, whether it was a man's or a woman's name, or whether it was acceptable to be used as a name.

<sup>3</sup> Article 294 of the Civil Code of Ukraine reads as follows (unofficial translation):  
Right to a Name

1. A natural person has the right to a name.

2. A natural person is entitled to a transcribed record of his first and last name in accordance with his/her national traditions.

3. In the case of distortion of a natural person's name, it must be corrected. If the distortion of the name was carried out in a document, such document is subject to replacement.

<sup>4</sup> Regulation No. 231 of the State Department for Citizenship, Immigration and Registration of Individuals of the Ministry of Internal Affairs of Ukraine, of 31 March 1995.

<sup>5</sup> The secretariat enquired about this case with the European Court of Human Rights. According to information received from the registry, dated 18 January 2016, no such application was ever lodged.

## The complaint

3.1 The author claims that the imposition by the State party's authorities of Ukrainian spelling for his name is in breach of his rights under articles 17 and 27 of the Covenant. He argues that the State party arbitrarily chose to spell his name in Ukrainian, which is not his own language, thereby imposing unnecessary restrictions and depriving him as a person belonging to a linguistic minority of the right to use his native language for passport records and as a basis for his name's transliteration into Latin letters.

3.2 The author asks the Committee to emphasize to the State party the need to bring its legislation on the right to use one's own native language and to choose names on official documents into line with the requirements of the Covenant, to provide him with a passport with his name officially recorded in accordance with his wishes, and to compensate him for his moral and material damages for not being able to travel outside the borders of Ukraine for six years.

## State party's observations on the merits

4.1 On 31 March 2016, the State party submitted its observations on the merits. At the outset, the State party informs the Committee that an anti-terrorist operation has been conducted on the territory of eastern Ukraine, including the territory of the city of Donetsk, where the first instance courthouse in which the relevant case files were stored was located. In the context of the anti-terrorist operation, the State party has no possibility to familiarize itself with the case files of the author, which were considered by the national courts.

4.2 Nevertheless, considering the materials presented by the author, the State party refers to secondary legislation to explain the rules governing the transliteration of names of a national language that does not use the Latin alphabet.<sup>6</sup> The State party also submits that the Departments of Citizenship, Immigration and Registration of Natural Persons of the territorial bodies (district departments) of the Ministry of Internal Affairs are in charge of the centralized execution and issuance of Ukrainian passports for travel abroad for citizens living in Ukraine.<sup>7</sup>

4.3 The State party accepts that according to article 294 (2) of the Civil Code, a natural person is entitled to a transcribed record of his or her first name and surname according to his or her national tradition.

4.4 The State party also points out that the author did not object on the question of the correctness of the spelling of his name and surname in the Ukrainian language in the international passport.

4.5 The State party submits that the Ministry of Internal Affairs, in its activities, abides by the Constitution; the laws of the country; the acts of the President and the resolutions of the Parliament, adopted in accordance with the Constitution and the laws of the country; the acts of the Cabinet of Ministers; and its own regulations.<sup>8</sup>

4.6 The State party explains that the spelling of the information in the visual inspection zone is given in the Ukrainian language, and then, after the slash, in Latin letters in accordance with the Ukrainian alphabet, namely: A – A ; I – I ; B – V ; Ї – I ; K – K ; Л – L ; M – M ; E – E ; H – N ; Є – IE ; O – O ; P – R ; C – S.<sup>9</sup>

4.7 The State party points out that in spelling the name and the surname of the individual in the Ukrainian passport for travel abroad, the national authorities should follow the information stated in Ukrainian. The State party affirms that the author agreed to the name

<sup>6</sup> The State party refers to secondary legislation: International Civil Aviation Organization, Doc 9303, *Machine Readable Travel Documents*, part 1: "Machine-readable passports", p. IV-9, point 8.3 (sixth edition, 2006).

<sup>7</sup> According to point 1 of addition 21 to Ordinance (Resolution) No. 231 of the Council of Ministers, of 31 March 1995, in force on 26 June 2007.

<sup>8</sup> According to point 2 of Ordinance (Resolution) No. 1383 of the Council of Ministers – "On Approval of the Regulations of the Ministry of Internal Affairs of Ukraine" – of 4 October 2006, in force on 14 May 2008.

<sup>9</sup> According to point 5 of addition 2 to Ordinance (Resolution) No. 231 of 31 March 1995.

and the surname in his Ukrainian (internal) passport. The State party considers that the information in the author's Ukrainian passport for travel abroad is in accordance with the national legislation.

4.8 The State party contends that the mere fact that the author's request to change the transliteration of his name and surname in his Ukrainian passport for travel abroad was rejected is not sufficient to substantiate a violation of his rights under articles 17 and 27 of the Covenant.

4.9 In addition, the State party informs the Committee that, by 11 March 2016, there was no information regarding the author's application to the European Court of Human Rights.

4.10 Taking the above into consideration, the State party considers that in the present case there was no violation of the author's rights guaranteed by the Covenant.

#### **Author's comments on the State party's observations**

5.1 The author provided comments on the State party's observations, on 27 May 2016. He notes that he uses the Latin transcription of his name and surname. He has used this to open bank accounts and to register for Internet services relating to payments and copyright. Employees of the banks and online services accept this transliteration. The author does not use the Latin transliteration of his patronymic, as he considers the tradition discriminatory on the ground of sex/gender. According to the legislation in force in the State party, Latin transcription of the patronymic is not included in either the internal passport or the international passport.

5.2 In his initial communication, the author claimed that his surname should be spelled as Moiseyenko. He is no longer pursuing this part of his claims, and agrees with the spelling of his surname in accordance with the transliteration table recommended by the Government — Моисеенко/Moyseenko. He based his complaint on the facts that were confirmed by the decisions of the national courts of first, appellate and cassation instances.

5.3 There are several systems and dozens of tables for transliterating national alphabets: BGN/PCGN, ALA-LC, ISO 9:1995 and others. The standards set out in point 8.3, section IV, of International Civil Aviation Organization Doc 9303, *Machine Readable Travel Documents*, part 1, volume 1 (sixth edition, 2006) do not oblige States to use any particular transliteration table and official languages to write the name in the visual inspection zone. Thus, the State party's authorities have approved the mandatory transliteration table arbitrarily. This table is founded on the transliteration recommended by Doc 9303 for the encoding of names in the machine-readable zone, not for the recording of names in the visual inspection zone.

5.4 Pursuant to the procedure for obtaining a passport for travel abroad, approved by Ordinance (Resolution) No. 231 of the Council of Ministers, of 31 March 1995, names in Cyrillic were subjected to forced change in accordance with the traditions of the Ukrainian language; the State party recognized only the Ukrainian spelling of the names in the passport of a citizen of Ukraine. The State party did not provide the possibility of choosing the transliteration table for minority languages. The mandatory transliteration table has been changed several times in two decades; hence, the spelling of a surname might vary for different members of a family.

5.5 The civil servants concerned wrote into the author's passport the additional Ukrainian name instead of the original Russian one, although the author did not consent to this and it was not his wish. The State party refused to use the Russian name for the transliteration. According to the author, this fact is established and reflected in national courts' decisions. He refers, inter alia, to a ruling of the Supreme Administrative Court, which stated: "The references of the plaintiff that he is a Russian, so the first and last names must be indicated in the passport in the Latin alphabet in accordance with the Russian alphabet, are unacceptable because they are contrary to the requirements of the legislation applicable to the legal dispute."

5.6 The author also cites the first instance court decision, which stated that: "The court is not taking into account the plaintiff's assertion that he is an ethnic Russian, and therefore for the transliteration of his surname, name and patronymic they were to apply the rules of transliteration from the Russian language, as, in accordance with art. 10 of the Constitution,

the State language in Ukraine is the Ukrainian language and the public authorities in their activities are using it exclusively.” In this connection, the author claims that the violation of the Covenant is not per se the court’s refusal to satisfy his claim, but the grounds of the court’s refusal, which appear to be arbitrary and unlawful and are in violation of the Covenant. He contends that the State party did not take into consideration his ethnic origin, his native language, his national traditions, or his wish to choose and change a name and to bring into line the spelling of the family members’ surname. The author concludes that the State party’s actions can therefore be classified as a violation of its obligations under articles 17 and 27 of the Covenant.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

6.3 The Committee takes note of the author’s claim that he has exhausted all the domestic remedies available to him. In the absence of an objection by the State party, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met for the purposes of admissibility.

6.4 The Committee takes note of the author’s claim that, in violation of articles 17 and 27 of the Covenant, the transliteration of his first name and surname in his international passport into the Latin alphabet is from Ukrainian, and not from Russian. The Committee also notes the State party’s assertion that authorities followed the linguistic rules on transliteration, according to the domestic legislation, taking into account the requirements for machine-readable travel documents issued by the State party for its citizens. The Committee further notes that in the author’s main domestic identification document, his internal passport, his name is written in both the Ukrainian and Russian languages. The Committee also observes that in his initial communication, the author claimed that his surname should be spelled in its transliterated version as Moiseyenko, while in his subsequent comments he no longer pursued that part of his claim and agreed with his surname being spelled in accordance with the transliteration table recommended by the State party. In the absence of any other information of relevance on file, in particular of specific arguments as to how the State party has unlawfully or arbitrarily interfered with the author’s rights under articles 17 and 27, and as to how the transliteration of the author’s first name into the Latin alphabet from Ukrainian in his international passport has concretely affected him by the linguistic rules being followed for transliteration for the issuance of an Ukrainian passport for international travel in accordance with the domestic legislation, the Committee considers that the communication is insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.