

## THE SPELLING OF A PERSON'S NAME AS A PART OF NATIONAL IDENTIFICATION. LEGAL ASPECT

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The right to use a name on one's native language and to do so officially is a linguistic right and it's loosely related to the national identity and human dignity. Article 11 of Framework Convention of the Protection of National Minorities of Council of Europe states that "The Parties undertake to recognize that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public. [1]". In other words, people must be offered an opportunity to add their surname in an original form in their passports, birth certificates and other personal documents if that person wants to change or abandon their surname. Additionally, in cases where the surname is spelled using foreign letters, the authorities have the right to demand the addition of phonetic transcription of person's surname using official alphabet.

During the last few years, UN Human Rights Committee and European Court of Human Rights reviewed numerous cases related to spelling of names and surnames, in which the applicants stated that the spelling of their names in documents differed from how they were spelled in their native languages (Baylac-Ferrer and Suarez v. France, Raihman alias Raihmans v. Latvia, Mentzen alias Mencena v. Latvia, Kuharec alias Kuhareca v. Latvia, Šiškina and Šiškins v. Latvia, Bulgakov v. Ukraine, Erdagöz v. Turkey, Taşkın and Others v. Turkey). Those complaints were submitted on the basis of violation of the right to a private and family life article 17 of the International Covenant on Civil and Political Rights, Article of the European Convention on Human Rights). This fact shows how important this subject is.

Even though Article 14 of the European Convention on Human Rights it is considered as the discrimination against languages as unacceptable, unlike Article 2 of International Covenant of Civil and Political Rights, prohibition of discrimination applies only to the rights that are listed in the convention itself [2]. The report of the European Court of Human Rights Research Division stated, that 'it has recalled that linguistic freedom as such is not one of the rights and freedoms governed by the Convention, and that with the exception of the specific rights stated in Articles 5 § 2 (the right to be informed promptly, in language which one understands, of the reasons for his or her arrest and) 6 § 3(a) and (e) (the right to be informed promptly, in a language which one understands, of the nature and cause of the accusation against him or her and the right to have the assistance of an interpreter if he or she cannot understand or speak the language used in court), the Convention per se does not guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice. The contracting States are in principle at liberty to impose and regulate the use of their official language or languages in identity papers and other official documents, for the purposes of linguistic unity." [3] Based on this information, it seems as if victims of lingual discrimination have more chances of getting help from UN Committee, rather than European Court of Human Rights. The cases against Latvia and Ukraine were considered unacceptable by the European Court, In Güzel Erdagöz v. Turkey case, the Court acknowledged the violation of Article of Convention based on the fact that Turkish courts declined applicant's request for changing her name's spelling in accordance with Kurdish pronunciation. However, in more recent Kemal Taşkın and Others v. Turkey case, the court stated that article 8 of the Convention wasn't violated since the request to change the spelling of the name was based on the fact that chosen names used letters that did not exist in official Turkish alphabet. Meanwhile, the UN Committee of Human Rights, while reviewing the Raihman (also known as Leonīds Raihmans) v. Latvia case, stated that the interference entailed for the author presents major inconveniences, which are not reasonable, given the fact that they are not proportionate to the objective sought. While the question of legislative policy, and the modalities to protect and promote official languages is best left to the appreciation of the State parties [...] the forceful addition of a declinable ending to a surname, which has been used in its original form for decades, and which modifies its phonic pronunciation, is an intrusive measure, which is not proportionate to the aim of protecting the official State language. Relying on the previous jurisprudence, where it held that the protection offered by article 17 encompassed the right to "choose and change" one's own name, the Committee considers that this protection *a fortiori* protects persons from being passively imposed a change of name by the State party. The Committee therefore considers that the State party's unilateral modification of the author's name on

official documents is not reasonable, and thus amounted to arbitrary interference with his privacy, in violation of article 17 of the Covenant" [4].

According to Article 33 of Law of Language, Belarusian (Russian) names and surnames are to be used in accordance with the national spelling tradition and Belarusian (Russian) grammar. Foreign names and surnames are to be spelled using Belarusian (Russian) language in accordance with the rights of writing of foreign names [5]

According to Article 74 of Instruction of the department of citizenship and migration work on issuing, registration, trading, invalidating, withdrawing, storage and nullifying passport of citizen of Republic of Belarus, bars "Name", "Second name" and "Surname" must be filled out using Belarusian or Russian language based on the documents provided by the applicant [6]. If the applicant does not provide the Latin transcription of his name, the automatic transliteration from Belarusian language to English is performed in accordance with the Instruction for transliteration of surnames and names of citizens of the Republic of Belarus during the collection of personal data for register of the population [7]. During the process, the letters of Belarusian (Russian) alphabet are replaced using corresponding Latin letters. This situation creates the potential risk of lingual conflicts based on violation of the right for national identity. Because of that, it seems like it would be reasonable to change the Instruction for transliteration of surnames and names using the Instruction for transliteration of geographical names [8] as an example.

The fact that national authorities are making such efforts to solve different problems related to personal names shows the importance of this subject. A personal name allows people to identify themselves. Because of that, it's important to ensure that people have as little difficulties as possible in this area.

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