



Convention on the Rights of the Child

Distr.: General
6 July 2021
English
Original: Spanish

Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure concerning communications No. 70/2019, No. 71/2019 and No. 72/2019**, ***

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| <i>Communications submitted by:</i> | S.D. (70/2019) and I.D. (72/2019) (represented by counsel, Vanessa Hernández Delgado); and M.M. (71/2019) (represented by counsel, María Victoria Gutiérrez Yumar) |
| <i>Alleged victims:</i> | The authors |
| <i>State party:</i> | Spain |
| <i>Date of communications:</i> | 3 December 2018 (70/2019 and 72/2019) and 21 January 2019 (71/2019) (initial submissions) |
| <i>Subject matter:</i> | Determination of the age of an unaccompanied minor |
| <i>Substantive issues:</i> | Best interests of the child, right to an identity, right to be heard, right to a guardian, right to development, right to special protection and assistance from the State |
| <i>Articles of the Convention:</i> | 3, 8, 18 (2), 20, 27 and 29 |

1. The authors of the communications are S.D., M.M. and I.D., nationals of the Gambia aged 16 at the time of submission of the communications. They claim that the State party has violated their rights under articles 3, 8, 18 (2), 20, 27 and 29 of the Convention. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 14 April 2014.

2. On 28 October 2018, the Maritime Safety and Rescue Agency, in cooperation with the National Police, detained the authors as they attempted to enter the State party on board a small boat. Although they were not carrying any documentation, they claimed to be minors.

* Reissued for technical reasons on 28 July 2021.

** Adopted by the Committee at its eighty-seventh session (17 May–4 June 2021).

*** The following members of the Committee participated in the consideration of the communications: Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffé, Sopia Kiladze, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, Zara Ratou, Aïssatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Benoit Van Keirsbilck.



On the same day, they were taken to an annex of the National Police station at Playa de las Américas in the south of the island of Tenerife.

3. On 31 October 2018, the authors were notified of a decree issued by the Santa Cruz de Tenerife Provincial Prosecutor's Office declaring them to be adults on the basis of medical tests, no evidence of which was recorded in their case files. The authors claim not to have been notified of the results of these tests. On 2 November 2018, the authors were notified of an order for their removal issued by the Immigration Office of the Government Sub-Delegation of Santa Cruz de Tenerife. On 3 November 2018, Court of Investigation No. 4 in Arona ordered that the authors be placed in the Hoya Fría migrant holding centre. However, the authors continued to be held in the annex of the National Police station in Playa de las Américas until 16 November, when they were transferred to the holding centre.

4. On 8 November 2018, one of the authors' lawyers went to the Santa Cruz de Tenerife Provincial Prosecutor's Office to collect the results of the medical tests allegedly carried out on the authors and five other minors, but the results were not included in their respective case files. The prosecutor for minors refused to hand over this evidence in all but one (unidentified) case. According to the report to which the lawyer had access, the only tests performed on the minors were a wrist X-ray taken for a bone-age assessment using the Greulich and Pyle atlas and a medical examination. The authors allege that these tests were conducted without their consent and without the presence of an interpreter, that they were not assisted by a specialist in the age determination process and that they did not have a lawyer present during the procedure. Moreover, according to the prosecutor's decree declaring the authors to be adults, panoramic dental X-rays were also taken, with the authors' informed consent, and the results interpreted according to the Mincer methodology. The authors claim that this test was never carried out and that it could not possibly have been carried out because the instrument needed to perform it was out of service.

5. Pursuant to article 6 of the Optional Protocol, between 23 January and 4 February 2019 the working group on communications, acting on behalf of the Committee, decided to register the communications and to grant interim measures, namely, a stay in the execution of the order for the authors' deportation pending consideration of their cases by the Committee, and their transfer to a child protection centre.

6. Between 24 March and 23 September 2019, the State party submitted its observations on the admissibility and merits of the communications. Between 10 June and 2 December 2019, the authors' lawyers submitted their comments on the State party's observations on admissibility and the merits. On 18 October 2019, the State party submitted additional observations on the admissibility and merits of communication No. 71/2019.

7. Between 4 and 24 November 2020, the authors' lawyers notified the Committee that they had lost contact with the authors and did not know their whereabouts.

8. At a meeting on 31 May 2021, the Committee, having considered the information provided by the authors' lawyers on the loss of contact, decided to discontinue its consideration of the communications in accordance with rule 26 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.
