



# Convention on the Rights of the Child

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## 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 communication No. 60/2018\* \*\*

<i>Communication submitted by:</i>	D.C. (represented by counsel, Kurt-Peter Merk)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Germany
<i>Date of complaint:</i>	27 August 2018 (initial submission)
<i>Date of adoption of decision:</i>	4 February 2020
<i>Subject matter:</i>	Exclusion from voting on the basis of age
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Best interests of the child; right to vote
<i>Articles of the Convention:</i>	2 (1), 3 (1), 4 and 12 (1)
<i>Article of the Optional Protocol:</i>	7 (e)

\* Adopted by the Committee at its eighty-third session (20 January–7 February 2020).

\*\* The following members of the Committee participated in the consideration of the communication: Suzanne Aho Assouma, Aissatou Alassane Sidikou, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffe, Olga A. Khazova, Cephass Lumina, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Mikiko Otani, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Ann Marie Skelton, Velina Todorova and Renate Winter.



1.1 The author of the communication is D.C., a national of Spain, born on 12 April 1999. The author, who was a 16-year-old child at the time of the events in question, claims a violation by the State party of his rights under articles 2 (1), 3 (1), 4 and 12 (1) of the Convention by denying him his right to vote in local elections on the grounds of age. The author is represented by counsel. The Optional Protocol entered into force for the State party on 14 April 2014.

1.2 On 7 May 2019, the Committee, acting through its working group on communications, decided to consider the admissibility of the communication separately from the merits of the case.

### **Facts as submitted by the author**

2.1 For over three months in 2015, the author lived with his parents in the municipality of Perl in Saarland, Germany.<sup>1</sup> The author wanted to vote in the local mayoral election scheduled on 28 June 2015.

2.2 On 7 April 2015, the author applied to the Perl Municipality Electoral Office for the purposes of exercising his right to vote in the election. On 8 April 2015, the municipality decided to reject the application.

2.3 On 15 May 2015, the author lodged an appeal to the municipality claiming that he had the right to vote in municipal elections in his country of residence as a citizen of a State member of the European Union. The appeal was rejected on 24 June 2015 on the grounds that the applicant did not meet the minimum age requirement stipulated in the local election law of Saarland.<sup>2</sup>

2.4 The election took place on 28 June 2015, without the author being able to vote.

2.5 On 29 July 2015, the author filed an action with the Administrative Court of Saarland that was dismissed by the Court in a decision dated 4 November 2016.<sup>3</sup> The Court found that depriving children of the right to vote was duly justified by the absence in children of the political maturity and discernment required to exercise that right.

2.6 The author applied to submit an appeal to the Higher Administrative Court of Saarland,<sup>4</sup> which rejected his application on 7 November 2017.<sup>5</sup>

### **Complaint**

3.1 The author contends that his rights under article 12 (1) of the Convention were violated, as the current legislation of Saarland denies children under 18 years old the right to freely express their political views on matters affecting them. The author claims that local elections affect him and that 16 years of age give him enough maturity to vote, as it does to 16-year-olds in other federal states.

3.2 The author also claims that the arguments made by the Administrative Court on the need to acquire a minimum degree of discernment and political maturity for the exercise of the right to vote can no longer be legally justifiable since the absence of a certain degree of political discernment cannot, for instance, be used as a reason to exclude persons with disabilities from exercising their right to vote. In particular, the author refers to article 29 of

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<sup>1</sup> The author indicates that he was not a national of Germany at the time of the events.

<sup>2</sup> The local election law of Saarland stipulates that all German citizens and all citizens of other States members of the European Union who have resided in the municipality for more than three months and who are at least 18 years old are eligible to vote (sect. 13 (1)).

<sup>3</sup> The author indicates that the judgment can be identified by file number 3 K 921/15.

<sup>4</sup> The author indicates that the appeal was based on section 124 (2) of the Administrative Court's code, according to which an appeal on points of fact and law shall only be admitted if serious doubts exist as to the correctness of the judgment, if the case is of fundamental significance and if a procedural shortcoming subject to the judgment of the court of appeal on points of fact and law is claimed and applies on which the ruling can be based.

<sup>5</sup> The author indicates that the judgment is identified by file number 2 A 433/16. The reasoning of the Higher Administrative Court of Saarland on the rejection of his claims has not been communicated to the author.

the Convention on the Rights of Persons with Disabilities, which recognizes the obligation of States parties to ensure that people with disabilities can exercise their political rights, including the right to vote and to be elected.<sup>6</sup>

3.3 The author further claims that denying persons under 18 years of age the right to vote, which constitutes a fundamental political right and a basis of democracy, violates the principle of non-discrimination set out in article 2 of the Convention.<sup>7</sup> In that regard, the author contends that at the time of the events a large number of federal states in Germany and of States members of the European Union had decided to lower the age for exercising the right to vote to 16 years. The situation at hand therefore entails arbitrary discrimination on the grounds of age, the place of residence and/or the nationality of the child.<sup>8</sup>

3.4 The author submits that denial of his right to vote contravenes the principle of the best interests of the child enshrined in article 3 (1) of the Convention. Denying persons under 18 years of age the right to vote represents a legislative restriction that cannot be in the best interests of the child.

3.5 The author concludes that, in Saarland, immediate legislative action should be taken to lower the age limit for the right to vote at least to 16 years of age, in accordance with article 4 of the Convention.

3.6 The author claims that all available and effective domestic remedies were exhausted with the rejection of the author's claims by the the Higher Administrative Court of Saarland. Although the author could have submitted a complaint to the Constitutional Court of Saarland, seeking remedy through that avenue would have been hopeless from the outset, as the Constitutional Court upholds the categorical exclusion of minors from the right to vote and its decision would have been based on the permanent case law of the Federal Constitutional Court, which has for decades justified excluding minors from the right to vote without any discussion and without seeking the insight of minors.<sup>9</sup> Since a national decision was last notified to the author on 7 December 2017, the present communication was submitted within the time frame set out in article 7 (h) of the Optional Protocol on a communications procedure.

#### **State party's observations on admissibility**

4.1 In its observations submitted on 15 January 2019, the State party claims that the communication is inadmissible because the author failed to exhaust domestic remedies, as required under article 7 (e) of the Optional Protocol. The State party submits that the author neither filed a complaint with the Constitutional Court of Saarland, nor did he raise the issue presented to the Committee before the domestic courts. The State party contends that by immediately referring to the Committee the author deprived the domestic Constitutional Court of the opportunity to comment on the relations and consequence on the application of the Convention with regard to the local election law of Saarland.

4.2 The State party also notes that, pursuant to article 7 (d) of the Optional Protocol, the communication should be considered inadmissible if the same matter has already been examined by the Committee or has been or is in the process of being examined under any other procedure of international investigation or settlement. In that regard, the State party submits that the author has provided no information on whether he has referred the case to other international bodies.

<sup>6</sup> The State party ratified the Convention on the Rights of Persons with Disabilities on 24 February 2009. The author alleges that the Administrative Court failed to recognize the case law of the European Court of Justice, to which the author suggested making a referral, a suggestion that was rejected on the grounds that the European Court is not a court of last instance.

<sup>7</sup> The author insists that denial of the right to vote is a violation of human dignity and leads to the political and economic interests of non-eligible children being subordinate to the interests of citizens entitled to vote.

<sup>8</sup> The author alleges that the situation also goes against articles 21, 24 (1) and 40 of the Charter of Fundamental Rights of the European Union, as well as article 12 of the European Convention on the Exercise of Children's Rights.

<sup>9</sup> The author does not specify the case law of the Federal Constitutional Court.

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

5.1 In his comments submitted on 15 April 2019 regarding the exhaustion of domestic remedies pursuant to article 7 (e) of the Optional Protocol, the author notes that, in German law, the national legal process refers only to the civil, criminal and administrative courts and not to the Constitutional Court.<sup>10</sup>

5.2 The author contends that even if the complaint to the Constitutional Court was a prerequisite for the exhaustion of domestic remedies under article 7 (e) of the Optional Protocol, such a complaint had no prospect of success in the case of the author. The author points to article 64 of the Constitution of Saarland, which provides that all Germans over the age of 18 years are entitled to vote,<sup>11</sup> and submits that the interpretation of the Constitutional Court of Saarland would be in line with that provision. He also argues that the Court would rely on the Basic Law of Germany and on the case law of the Federal Constitutional Court, neither of which uphold minors' right to vote.<sup>12</sup>

5.3 The author states that the present communication has been submitted only to the Committee, not to any other international body.

### **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 rule 20 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 With regard to whether the same matter has been or is being examined under another procedure of international investigation or settlement, the Committee notes that in its observations dated 15 January 2019 the State party contends that it is not clear that the author's case has been or is being examined under another procedure and that in his comments dated 15 April 2019 the author indicates that the same matter has not been examined under another procedure of international investigation or settlement.

6.3 Thus, the Committee considers the present communication admissible with regard to article 7 (d) of the Optional Protocol.

6.4 The Committee notes that in its observations dated 15 January 2019 the State party challenges the admissibility of the communication on the grounds that the author did not exhaust domestic remedies by appealing to the Constitutional Court. In that regard, the Committee notes the 15 April 2019 submission in which the author indicates that the Constitutional Court would not have provided an effective remedy since it would have ruled first in line with the clear constitutional provision that only persons above the age of 18 years are entitled to vote and then against his application.

6.5 The Committee recalls that authors must make use of all judicial and/or administrative avenues that may offer them a reasonable prospect of redress. Moreover, the Committee considers that domestic remedies need not be exhausted if they objectively have no prospect of success, for example in cases where under applicable domestic laws the claim would inevitably be dismissed or where established jurisprudence of the highest domestic tribunals would preclude a positive result.<sup>13</sup> However, the Committee notes that mere doubts or assumptions about the success or effectiveness of remedies do not absolve the authors from exhausting them.<sup>14</sup>

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<sup>10</sup> It is not clear from the author's submission which law he refers to.

<sup>11</sup> See the Constitution of the Saarland ([www.bijus.eu/?p=10314](http://www.bijus.eu/?p=10314)).

<sup>12</sup> In his submission, the author specifically refers to article 16 of the Basic Law of Germany, which does not, however, seem to fit the context. The author has been asked which article of the Basic Law and of the case law he would refer to in the present context.

<sup>13</sup> See, for example, Human Rights Committee, *Pratt and Morgan v. Jamaica*, communication No. 225/1987, paras. 12.3–12.5; *Barzhig v. France*, communication No. 327/1988, para. 5.1; and *Young v. Australia* (CCPR/C/78/D/941/2000), para. 9.4.

<sup>14</sup> See, for example, Human Rights Committee, *R.T. v. France*, communication No. 262/1987, para. 7.4;

6.6 In the present case, the Committee considers that, in order to raise the claims to the national level, it would have been logical for the author to submit a constitutional complaint, an avenue that was available to the author at the time of the events in question. The Committee notes the author's allegation that there is no prospect of success in seeking a constitutional remedy, but it also notes that the author does not substantiate his allegations through previous jurisprudence, either of the Constitutional Court of Saarland or the Federal Constitutional Court. The Committee considers that a constitutional motion should not be considered to be bound to fail simply because of the current constitutional texts and a few general precedents. The Committee also considers that the Constitutional Court of Saarland should have been given the opportunity to interpret the Constitution of Saarland in light of the claims of the author and the provisions of the Convention invoked by him. In the absence of further reasoning from the author as to why he did not attempt to pursue the constitutional remedy, other than the mere doubt of prospects of success, the Committee considers that the author did not exhaust all domestic remedies that were reasonably available to him to challenge the alleged violation of his rights under articles 2 (1), 3 (1), 4 and 12 (1) of the Convention.

6.7 Consequently, the Committee declares the communication inadmissible for non-exhaustion of domestic remedies under article 7 (e) of the Optional Protocol.

7. The Committee on the Rights of the Child decides:

(a) That the communication is inadmissible under article 7 (e) of the Optional Protocol;

(b) That the present decision shall be transmitted to the author of the communication and, for information, to the State party.

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and *S.S. v. Norway*, communication No. 79/1980, para. 6.2. See also *Sadic v. Denmark* (CERD/C/62/D/25/2002), para. 6.5.