



Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 51/2018***, ***

<i>Communication submitted by:</i>	A.B. (represented by counsel, Sini Majlander)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Finland
<i>Date of communication:</i>	27 June 2018
<i>Date of adoption of decision:</i>	4 February 2021
<i>Subject matter:</i>	Best interests of the child; discrimination; non-refoulement
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Articles of the Convention:</i>	2, 3, 13, 14, 16, 17, 19, 22 and 29
<i>Articles of the Optional Protocol:</i>	7 (d) and (f)

1. The author of the communication is A.B., a national of the Russian Federation born on 27 June 2010. He claims that the State party has violated his rights under articles 2, 3, 13, 14, 16, 17, 19, 22 and 29 of the Convention. The author is represented by counsel. The Optional Protocol entered into force for the State party on 12 February 2016.

Facts as submitted by the author

2.1 The author was born and lived in the Russian Federation until 2015. His biological mother, V.B., is a lesbian who lived with her female partner, A.S.¹ V.B. and A.S. concealed the nature of their relationship in the Russian Federation out of fear of persecution and discrimination, given the very hostile environment for the lesbian, gay, bisexual and transgender communities within Russian society.² They also hid it from A.B., fearing that he

* Second reissue for technical reasons (22 April 2021).

** Adopted by the Committee at its eighty-sixth session (18 January–5 February 2021).

*** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Philip Jaffé, Olga A. Khazova, Gehad Madi, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, Aïssatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Renate Winter.

¹ V.B. and A.S. are nationals of the Russian Federation; V.B. was born on 11 February 1980, and A.S. was born on 5 June 1981. The author alleges that they are married but that the Russian Federation recognizes neither same-sex marriage nor any other form of civil union for same-sex couples as of the date of the initial submission.

² Homosexuality was decriminalized in the Russian Federation in 1993, and it was removed from the official list of mental disorders and conditions in 1999. However, according to the author, in recent years, negative social attitudes, violence and hostilities towards lesbian, gay bisexual and transgender



might speak about it outside their inner circle. They disclosed their true relationship only to their closest friends and relatives. They participated in activities supporting lesbian, gay, bisexual and transgender rights anonymously. When an article describing the author's family was published on a public Internet portal, albeit with fake names, V.B. and A.S. were threatened in comments made under the article.

2.2 When the author talked about his family at his kindergarten, the attitude of the staff at the kindergarten changed, and they started to treat him rudely and aggressively. The author started to cry more often and became reluctant to go to kindergarten. The family moved him to another kindergarten, but the staff there indicated to V.B. that her family structure was "abnormal" and treated the author poorly, including by yelling at him, hitting him and not preventing him from eating food to which he was allergic. Other children in the kindergarten also started bullying the author, saying that "homosexuals should not exist". The author's parents reported the bullying to kindergarten staff, to no avail. The author had no friends, and the parents of other children "took their children away from him and his family". As a result of the situation that he experienced, A.B. became anxious and started to express suicidal thoughts.

2.3 In 2015, when the author was 5 years of age, the family moved to Finland. On 10 April 2015, they filed requests for asylum and for humanitarian residence permits on compassionate grounds, based on the persecution and discrimination that they had faced and the fear of further infringement of their rights due to V.B.'s and A.S.'s sexual orientation.

2.4 While their applications were being processed, the family lived in Finland for about two and a half years. In the meantime, the author started to learn Finnish and attended a preschool, where he made friends. V.B. and A.S. spoke to the author about their relationship for the first time, and the author started to call both of them "mother". The family engaged actively with other same-sex parent families and the author learned about different types of family structures. According to a preschool teacher, the author seemed happy and open during his stay in Finland.

2.5 After they applied for asylum and residence permits in Finland, the Finnish Immigration Service interviewed V.B. and A.S. three times, where they explained that families with same-sex parents lived in the Russian Federation under strong pressure and in constant fear of threats and persecution. However, the author was never heard in the context of the proceedings.

2.6 On 19 July 2016, the Finnish Immigration Service rejected all of their applications, concluding that the family could be deported to the Russian Federation without a risk of being subject to persecution, severe disadvantage or inhumane or degrading treatment, or be returned to a different area. The Immigration Service noted that the negative rhetoric against lesbian, gay, bisexual and transgender people had increased in the Russian Federation in recent years, both by public officials and media, and that the "gay propaganda law" adopted in 2013 had legitimized the authorities' harassment, arrest and even conviction of activists promoting the rights of sexual minorities. It also noted that the gay propaganda law and the generally stricter societal attitudes has led to increased violence against sexual and gender minorities, which was met with permissiveness and impunity from authorities. Regarding the author's family, the Immigration Service accepted as a fact that V.B. and A.S. had experienced discrimination within Russian society in the past, but considered that such discrimination did not meet the threshold of persecution and did not consider that V.B. and A.S. would be in danger of severe violations of their rights if returned to their home country, given that they had lived as lesbians in the Russian Federation without becoming victims of violence or other severe violations of their rights and without having experienced problems with the authorities due to their sexual orientation.³ As for the author, the Immigration

people have increased among the general public and high-level government officials, which was reflected in certain amendments of laws and administrative codes. See Code of Administrative Offences of the Russian Federation, amended in 29 June 2003, which sets an administrative liability for the promotion of non-traditional sexual relationships among minors ("gay propaganda law") and Federal Law No. 167-FZ, modified in July 2013, which prohibits any foreign adoption of Russian children by parents in a same-sex marriage recognized by another State.

³ The Finnish Immigration Service referred in its examination to the Office of the United Nations High

Service accepted as facts that V.B.'s and A.S.'s sexual orientation might have partly affected the author's negative treatment by staff and other children at the kindergarten and that he had been bullied. However, it noted that other factors might have also influenced the said treatment and that the bullying nevertheless did not meet the criteria of persecution, because the actions taken against the author were not particularly severe and some acts, such as yelling, could be part of normal discipline at the kindergarten. The author had not been prevented from attending the kindergarten or subjected to other unreasonable actions that would severely violate his rights. The Immigration Service indicated, in its assessment of the family's applications for residence permits on compassionate grounds, that it was in the best interests of any child to be allowed to live together with his or her parents. The Immigration Service therefore decided that deportation of the family to the Russian Federation was not against the best interests of the child.

2.7 The Finnish Immigration Service noted that the fear among sexual and gender minorities of having their children taken away from them had increased since 2014 in the Russian Federation. However, the Immigration Service was not aware of any cases where persons belonging to a sexual minority had lost custody of their child due to their sexual orientation, and it therefore did not accept that V.B. and A.S. would be at risk of having the author removed from their custody if returned to the Russian Federation. The Immigration Service concluded that the author and his family would not be at risk of being subjected to serious violations of their rights in their home country.

2.8 The author's family appealed the decision of the Finnish Immigration Service to the Helsinki Administrative Court, alleging that the Immigration Service had failed to justify the absence of a risk of future persecution of the family, insisting that the discrimination that they had experienced should be considered as persecution and that the lack of previous experience of persecution should not be considered as evidence of an absence of such a risk. The family also insisted that, even if they were not considered eligible for international protection, taking into account all the facts of the case, as well as a human rights-centred interpretation of the law and the principle of the best interests of the child, they should have been granted residence permits on compassionate grounds.⁴

2.9 By a decision of 14 March 2017, the Helsinki Administrative Court confirmed the decision of the Finnish Immigration Service. The Court took note of the report submitted by the author's family documenting a case where a Russian national had lost custody of her child for having a same-sex relationship. However, the Court found that the report did not explain the case in detail and that a single case did not allow it to conclude that the family had a well-founded fear that the author might be removed from their custody if returned to the Russian Federation. The Court recognized that sexual and gender minorities in the Russian Federation, especially those who were open about their homosexuality, might be at risk of becoming victims of violence and other severe violations of their rights. However, the Court concluded that V.B. and A.S. would not be in danger of being subjected to severe violations of their rights or serious harm if returned to their home country. In the judgment, there was no reference to the best interests of the child.

2.10 On 30 March 2017, the family applied for leave to appeal to the Supreme Administrative Court of Finland, arguing that the Finnish Immigration Service and the Helsinki Administrative Court had failed to assess the best interests of the child. The family claimed that there was no assessment of how the openly hostile environment, the persecution and discrimination of lesbian, gay, bisexual and transgender persons and families with same-sex parents in the Russian Federation would affect the author's rights. Moreover, they alleged that neither the Immigration Service nor the Administrative Court had given any weight to the fact that, if returned to the Russian Federation, in order to protect himself and his family,

Commissioner for Refugees (UNHCR) handbook on procedures and criteria for determining refugee status.

⁴ The family claimed that the Finnish Immigration Service had failed to take the best interests of the child as a primary consideration in their case, in which they submitted country information on the situation of children of lesbian, gay bisexual and transgender parents and a written statement supporting their allegations, especially their fear of losing custody of the author if the authorities discovered the nature of their relationship.

the author would need to learn to conceal and lie about his family. On 4 July 2017, their leave to appeal was rejected. Consequently, the judgment of the Administrative Court on the matter became final.

2.11 On 25 July 2017, the author, V.B. and A.S. applied for assisted voluntary return. The application was granted on 27 July 2017 and, on 7 August 2017, the author left Finland with V.B. and A.S, assisted by the International Organization for Migration.⁵

2.12 Upon their return to the Russian Federation, V.B. and A.S. felt compelled to tell the author to conceal the true nature of their relationship. The author has not made any friends in his new school and has started to question whether there is something wrong with his parents' relationship, given that Russian society openly criticizes same-sex relationships. Given that the attitude of the school staff has become rude towards the author and V.B., the family suspects that the nature of the relationship between V.B. and A.S. may have been disclosed and that they may need to move again. The family continues to live under constant fear of further persecution and discrimination.

Complaint

3.1 The author claims to be a victim of a violation of article 3 of the Convention, read in conjunction with article 22 of the Convention.⁶ He alleges that the Finnish authorities neglected to conduct a proper assessment of the best interests of the child in the examination of his and his family's applications for asylum or residence permits in Finland. Although the Finnish Immigration Service mentioned the best interests of the child in its decision, it was done in a superficial manner and only concerned the concept of being in the best interests of any child to be allowed to live with his or her parents. The Helsinki Administrative Court and the Supreme Administrative Court of Finland did not take any stand on, or even mention, the best interests of the child in their respective decision or judgment. The author therefore alleges that such an inadequate assessment of the best interests of a child seeking refugee status, in itself, constitutes a violation by the State party of article 3 of the Convention, read in conjunction with article 22 of the Convention.

3.2 The author argues that the Russian gay propaganda law constitutes a continuous violation of the right to privacy of lesbian, gay, bisexual and transgender people and their families, by stigmatizing their ways of life. There exists a risk of children of lesbian, gay, bisexual and transgender parents being taken into custody against their or their parents' will. To avoid future discrimination and mental and physical violence, the author is therefore forced to hide, and even to lie about, what he knows about his parents' relationship. In Russian society, the author is also restricted from receiving any information concerning homosexuality and lesbian, gay, bisexual and transgender people, including on family life, which would be essential for his health and well-being, as a child belonging to such a family. The author is also denied the right to education that would develop his personality, as a member of his family, and that would guide other children to respect him and his human rights. Furthermore, an ongoing State-run media campaign describes lesbian, gay, bisexual and transgender people in derogatory terms and characterizes them as part of a foreign conspiracy to undermine Russian values. The author stresses that such continuous statements about the inferiority of lesbian, gay, bisexual and transgender people and their families contribute to social intolerance towards them and their families and that there is an increasing and more coordinated use of violence by extremist groups towards lesbian, gay, bisexual and transgender people and a failure of the police to respond adequately to such incidents.⁷

⁵ As of the time of initial submission, the family lived in the Russian Federation.

⁶ The author refers to the Committee's general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.

⁷ See Human Rights Watch, "License to harm: violence and harassment against LGBT people and activities in Russia", December 2014. The author also stresses that international human rights bodies have condemned the gay propaganda law in the Russian Federation and the actions of the Russian authorities and have expressed deep concern as to their effects on lesbian, gay, bisexual and transgender people and their families, referring to European Court of Human Rights, *Bayev and others v. Russia*, application No. 67667/09, and others.

3.3 In that context, the author claims that the decision by the Finnish authorities to deport him and his family to the Russian Federation was contrary to his best interests, as any interpretation of the law or decision by the Finnish authorities leading to the risk of renewed maltreatment, and subjecting him to the risk of said violations, cannot be in the best interests of the child within the meaning of article 3 of the Convention.

3.4 Furthermore, the author alleges that his undisputed maltreatment in the Russian Federation violates his right not to be discriminated against based on special characteristics or other status of the child or his or her family and his right to be protected from being hurt and mistreated, physically or mentally, under articles 2 and 19 of the Convention. He asserts that there were violations of his rights under articles 13, 14, 16 17 and 29 of the Convention, including his rights to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds, freedom of thought, to privacy, which should protect a child from attacks against his or her way of life, good name, family and home, to obtain information that is important to his health and well-being and to education that develops a child's personality, talents and abilities to the fullest and encourages children to respect others, human rights and their own and other cultures, in the light of the increased hostility and violence against lesbian, gay, bisexual and transgender people in the Russian Federation.

3.5 The author asserts that, even though his mother, V.B., filed a complaint with the European Court of Human Rights, that complaint concerned his mother's rights and not his and is therefore different from the present complaint.⁸ Furthermore, the European Court of Human Rights declared that it could not examine V.B.'s application, because she had not complied with all the conditions set forth in the Rules of the Court.⁹ The application was not amended in time, and the substance of the case was therefore not examined.

State party's observations on admissibility

4.1 In observations dated 22 October 2018, the State party submitted that the communication should be declared inadmissible.

4.2 Concerning the author's allegation based on articles 3 and 22 of the Convention, the State party claims that the same matter has been examined by another procedure of international investigation or settlement and that therefore the communication should be declared inadmissible under article 7 (d) of the Optional Protocol. The State party notes that the fact that the author's mother did not comply with the conditions set forth in the Rules of the Court is due to her own actions, and it appears that the family is trying to find another way to challenge the outcome of their asylum case, after having failed to do so through the European Court of Human Rights. Although the present communication has a different author, the matter raised herein is substantially the same as that raised before the European Court of Human Rights. The case should therefore be declared inadmissible on the grounds of article 7 (d) of the Optional Protocol and in accordance with rule 16 (3) (f) of the Committee's rules of procedure under the Optional Protocol.

4.3 The State party also alleges that the author's central claim is based on the fact that he is not satisfied with the outcome of the domestic asylum proceedings. In that regard, the State party notes that the Committee should not be used as a court of fourth instance. The Committee should not re-evaluate the facts and evidence duly considered by the national authorities, nor question the findings and conclusions of such decisions. The State party adds that, in reaching their decisions, the Finnish authorities took the best interests of the child into account, together with other factors, such as the protection of family life and the author's cultural and social connections to his family's home country, when considering the author's request for a residence permit and his asylum application. The State party reiterates that the

⁸ The author's mother lodged an application concerning the same immigration proceedings with the European Court of Human Rights on 22 December 2017. The application concerned alleged violations under articles 3 (prohibition of torture), 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁹ Specifically, rule 47 of the Rules of the European Court of Human Rights. See www.echr.coe.int/Documents/Rule_47_ENG.pdf.

author left Finland voluntarily in August 2017, assisted by the International Organization for Migration.

4.4 The State party argues that the author has not been able to substantiate his claims before the Committee and that the communication therefore should be deemed inadmissible as manifestly ill-founded within the meaning of article 7 (f) of the Optional Protocol.

4.5 The State party concludes by arguing that the author's claims under articles 2, 13, 14, 16, 17, 19 and 29 of the Convention are inadmissible for failure to exhaust domestic remedies, as required by article 7 (e) of the Optional Protocol. The State party adds that those parts of the author's communication should nevertheless be declared inadmissible under article 7 (f) of the Optional Protocol as insufficiently substantiated.

Author's comments on the State party's observations on admissibility

5.1 The author provided comments dated 5 February 2019 on the State party's observations on admissibility.

5.2 Regarding the State party's allegation that the communication should be declared inadmissible because the case was submitted to the European Court of Human Rights, the author stresses that, due to a failure to meet the procedural conditions, the Court rejected his mother's application without taking any stand on the admissibility or the merits of the case and that therefore the matter brought before the Committee has not been examined by another international procedure within the meaning of article 7 (d) of the Optional Protocol and rule 16 (2) (f) of the Committee's rules of procedure under the Optional Protocol.¹⁰

5.3 As for the State party's allegation that the author is using the Committee as a court of fourth instance, the author notes that he does not simply disagree with the result of the domestic proceedings, but claims that the Finnish authorities failed to conduct a proper assessment of the best interests of the child in his case, which led to a decision that was clearly contrary to the best interests of the child and a denial of justice.¹¹ The author notes that, although existing domestic legislation would have allowed the Finnish authorities to consider the best interests of the child within the asylum proceedings, it was not done in his case. The issue is not the incompatibility of the domestic legislation with the rights guaranteed in the Convention as such, but the domestic authorities' failure to comply with the principle of the best interests of the child.

5.4 The author notes that, since they returned to the Russian Federation, he and his family have been forced to move to a different city three times already, due to their local community and/or people at the author's school discovering that his parents are a same-sex couple. To date, the author's parents continue to try to hide the nature of their relationship from the author's school by claiming that one of his mothers is actually his aunt, although maintaining that lie has become more difficult, given that the author himself now knows the true nature of their relationship and sometimes accidentally shares it with other people. The situation has led to the author experiencing psychological problems and having to visit a neurologist. He is anxious and often unable to sleep. It has also entailed physical symptoms, such as issues with the author's eyesight caused by the constant nervous tension, which has caused the blood vessels in his eyes to spasm.

5.5 With regard to exhaustion of domestic remedies, the author reiterates that he invoked a violation of his rights under article 3, read in conjunction with article 22, of the Convention in domestic proceedings. The author also asserts that he has also invoked other rights under the Convention in the communication to demonstrate the different elements that the Finnish authorities should have considered when assessing the best interests of the child in his case.

¹⁰ The author also notes that the procedural requirement that his mother failed to comply with was to provide the Court with English translations of the family's written statements at various stages of the Finnish legal proceedings. The Court informed his mother's legal representative that the translations needed to be submitted by mailed letter dated no later than 4 January 2018. The letter reached Finland several days after the final date for resubmitting the application had passed.

¹¹ See European Court of Human Rights, *Jeunesse v. Netherlands*, application No. 12738/10, para. 120; *Neulinger and Shuruk v. Switzerland*, application No. 41605/07, para. 135; and *Karrer v. Romania*, application No. 16965/10, para. 46.

The State party's observations in that regard emphasize the author's view that the Finnish authorities failed to conduct a proper analysis of the best interests of the child, which is based on all the rights set forth in the Convention.

State party's additional observations on admissibility and its observations on the merits

6.1 In observations dated 21 February 2019, the State party reiterated its previous observations on the admissibility of the communication and submitted that the communication was without merit. The State party submits that the author's allegation that he had not been heard during the process should be declared inadmissible for non-exhaustion of domestic remedies under article 7 (e) of the Optional Protocol. The State party argues that neither the author nor his family ever invoked that the Finnish Immigration Service should have heard him in person. During the domestic proceedings, an oral hearing before the Helsinki Administrative Court was requested, but it was not explicitly indicated that they wished to let the author be heard in the appeal. The Administrative Court therefore did not find that an oral hearing would be needed in order to elucidate the facts and make a decision on the matter.

6.2 Referring to the general legal framework to protect the rights of asylum seekers, the State party highlights that, under the Aliens Act, special attention is paid to the best interests of the child and to circumstances related to the child's development and health. Before a decision is made concerning a child who is at least 12 years of age, the child should be heard, unless such hearing is manifestly unnecessary, and the child's views should be taken into account in accordance with the child's age and level of development. A younger child may also be heard if the child is sufficiently mature to have his or her views taken into account. The State party notes that, when considering whether to hear from a minor, the authorities must emphasize the relevance of the best interests of the child and determine whether the child's interests possibly differ from those of the guardian(s). It would be unnecessary to hear a child in certain matters on which the guardian has filed the petition on the child's and his or her own behalf and the child's interests cannot be considered to conflict with those of the guardian. The State party notes that, in the present case, the author arrived in Finland when he was 4 years of age. At the time of the Immigration Service's decision, he was 6 years of age. Taking into account his age and level of maturity, the Immigration Service decided not to hear him during the asylum investigation. In that connection, the best interests of the child were not considered to conflict with those of his guardians.

6.3 Regarding the alleged violation of article 3 of the Convention, the State party submits that the best interests principle is fully reflected in the national legislation outlined above and in the national authorities' decisions, which complied with requirements under article 3.¹² The State party notes that, when considering whether to grant a residence permit on compassionate grounds, the Finnish Immigration Service held that it is in a child's best interest primarily to live and reside together with his or her parents, who are best placed to take care of their children, to cater for their well-being and to give the children the support and guidance needed for their growth and development. Therefore, refusing them residence permits, denying them asylum in Finland and sending them back to their home country did not conflict with the best interests of the child. Accordingly, the best interests of the child have been duly assessed, not only when considering whether to grant a residence permit on compassionate grounds, but also when examining the family's application for asylum and return to the Russian Federation. The national authorities have therefore carefully considered the situation of the author as a whole, in accordance with the Committee's specific guidance. Other case-specific circumstances have also been taken into account, including the author's

¹² For the broadly agreed consensus on the best interests of the child set out in article 3 of the Convention, the State party refers to European Court of Human Rights, *X v. Latvia*, application No. 27853/09; and *Jeunesse v. Netherlands*; the Committee's general comment No.14 (2013); and joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration.

situation of vulnerability, the protection and safety of the child and his cultural and social ties.

6.4 Regarding the alleged violation of article 22, the State party notes that the Convention does not guarantee the right of children to enter or reside in a particular country.¹³ The State party stresses that the best interests principle can be used to inform the interpretation of a certain element of the definition of a refugee in the Convention relating to the Status of Refugees,¹⁴ but not as an alternative or replacement of that definition. The State party refers to the Committee's case law relating to the deportation of children, where the Committee assessed that there was a specific and personal risk of a serious violation of a child's rights or real risk of irreparable harm to a child.¹⁵ According to the case law, the State party concludes that it is clear that a certain characterization or a degree of gravity of the potential risk is required for the risk to imply an obligation of non-refoulement for States parties to the Convention. The State party argues that no risk of a serious violation of the author's rights or irreparable harm to the child exists, reiterating that the Finnish authorities made thorough assessments of the situation of sexual minorities in the Russian Federation, as well as the specific and personal situation of the author, including his fear of being removed from his family if returned to the Russian Federation, with the best interests of the child taken into account.¹⁶ The migration authorities also considered that the bullying suffered by the author did not meet the criteria of persecution, because the acts against him were not particularly serious. Therefore, the migration authorities concluded that there were no relevant grounds for believing that the author would face a real risk of irreparable harm in his home country, corroborated by the fact that the author does not seem to indicate that he has suffered serious harm or persecution after his return.

6.5 The State party also submits that the author's allegations under articles 2, 13, 14, 16, 17, 19 and 29 do not raise any separate issues.

Author's comments on the State party's additional observations on admissibility and its observations on the merits

7.1 In comments dated 19 August 2019, the author reiterated his previous comments on admissibility. Regarding the State party's argument of non-exhaustion of domestic remedies concerning his allegation of not having been heard, the author notes that the fact that the Finnish authorities decided not to hear him during domestic proceedings has not been presented as a self-standing claim of violation of the Convention. The fact has been presented simply to clarify the contents of the domestic proceedings in the author's case.

7.2 The author asserts that the domestic authorities' examination does not meet the criteria of a systemically conducted assessment of the best interests of the child. The author contends that they should have conducted an in-depth and child-sensitive assessment of the existence of a risk of a serious violation of the Convention, taking into special consideration the vulnerability of the author as part of a minority group with his lesbian parents, as well as the vast amount of information available on the current situation of the children of lesbian, gay, bisexual and transgender parents. In that regard, the author adds that the domestic authorities failed to assess the psychological and emotional impact on him of the abusive treatment, for example, in the kindergarten and, more broadly, in the openly hostile environment and

¹³ See *Jeunesse v. Netherlands*. The State party also notes that the Russian Federation is bound by the same obligations under articles 3 and 22 of the Convention to respect the rights of the child as other States parties.

¹⁴ See the Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin.

¹⁵ For example, in *A.Y. v. Denmark* (CRC/C/78/D/7/2016), para. 8.12, related to the applicants' alleged conversion from Islam and the principles of the best interests of the child in the deportation of A.Y. to Afghanistan, in which the Committee referred to the potential existence of a specific and personal risk of a serious violation of A.Y.'s rights enshrined in the Convention upon return and ultimately held that the applicants had failed to justify such a risk. Similarly, in *K.Y.M. v. Denmark* (CRC/C/77/D/3/2016), para. 11.3, concerning the deportation of a girl to Somalia, where she allegedly would face the risk being forcefully subjected to female genital mutilation, the Committee referred to a real risk of irreparable harm to the child.

¹⁶ In that sense, the State party argues that the present case is different from *K.Y.M. v. Denmark*.

discriminatory policies of the Russian Federation towards sexual minorities. No assessment of how safe and protected the author would be if returned to the Russian Federation was undertaken. Given that the domestic authorities had accepted as a fact that people belonging to sexual minority groups are at risk of being subjected to violence or other severe violations of their rights in the Russian Federation, an individual assessment of the author's safety as a child of lesbian parents should have been conducted. In that context, the author highlights that, unlike the previous time, it would be impossible to hide the relationship between his mother and her female partner in the future because he had become aware of it while the family was residing in Finland, and, upon the family's return to the Russian Federation, knowledge of the relationship was bound to spread and make the author more prone to being a victim of a violation of his rights.¹⁷

7.3 The author also argues that the existence of personal and serious risk to him has been further substantiated by the physical and psychological symptoms that he has experienced since the family's return to the Russian Federation, as well as by the fact that the family has been forced to move three times already, after the author accidentally revealed his parents' relationship, causing the local community to turn hostile towards them. Accordingly, the Finnish authorities' decision to return the author to the Russian Federation has left him at risk of severe violations of his rights under the Convention.

Third-party intervention

8.1 On 15 April 2020, a third-party intervention was submitted by the Child Rights International Network, the International Commission of Jurists, the International Lesbian, Gay, Bisexual, Trans and Intersex Association-Europe, the International Lesbian, Gay, Bisexual, Trans and Intersex Association-World and the Network of European LGBTIQ* Families Associations, with the purpose of providing information relevant for the assessment of the best interests of children of lesbian, gay bisexual, transgender and intersex parents in the context of deportation to the Russian Federation.

8.2 The third parties draw special attention to the importance of taking a "holistic and child-centred" approach, considering the "child's individual and specific circumstances and needs", as well as to two procedural aspects. The first aspect is that the child's right to be heard must be emphasized at the procedural level, demonstrating the importance that must be attached to giving the child the opportunity to express his or her views. The second aspect is, as the Committee has clarified, that it is not sufficient for the decision maker to refer superficially to the child's best interests. Any decision must be motivated, justified and explained, explicitly addressing all the factual circumstances regarding the child, the elements that were found to be relevant in the assessment of the best interests of the child, the context of those elements in the specific case and how they were weighted to determine the child's best interests.¹⁸

8.3 Regarding the best interests of the child and non-refoulement, the third parties reiterate that the best interests of the child must be taken fully into consideration in granting or refusing applications for entry into or residence in a country and that, because they should be a primary consideration, they therefore should have a high priority.¹⁹

8.4 Referring to international standards and jurisprudence, sexual orientation constitutes a fundamental aspect of an individual's identity and awareness and lesbian, gay, bisexual and transgender people are as much entitled to freedom of expression and association as others. The fact that an applicant may be able to avoid persecution by concealing or by being "discreet" about his or her sexual orientation or gender identity, or has done so previously, is not a valid reason to deny refugee status. Concealing one's sexual orientation requires the

¹⁷ The author also adds that his case differs from the Committee's previous jurisprudence in *A.Y. v. Denmark*, which the Committee found inadmissible because the authors had failed to justify the existence of a personal and serious risk, given that, whereas in that case, the domestic authorities had concluded that the authors' conversions to Christianity were not genuine, in the present case, the domestic authorities have acknowledged as a fact that the author's guardians are lesbians.

¹⁸ General comment No. 14 (2013), para. 97. See also European Court of Human Rights, *Cința v. Romania*, application No. 3891/19, para. 52; and *G.S. v. Georgia*, application No. 2361/13, para. 45.

¹⁹ Joint general comment No. 3/No. 22 (2017), para. 29. See also *A.Y. v. Denmark*.

suppression of a fundamental aspect of one's identity,²⁰ and being compelled to conceal one's sexual orientation may also result in significant psychological and other harms.²¹ That is of particular concern if asylum seekers whose asylum claims have been rejected are required to conceal their or their relatives' sexual orientation upon their return in an attempt to avoid persecution, given that fear of discovery and the resulting ill-treatment by State or non-State actors may be lifelong. The third parties argue that the same applies to children required to hide their family background in an attempt to avoid bullying or being taken away from their parents and that in some cases psychological harm is persecutory. In particular, risk of discovery is particularly high in cases of young children with lesbian, gay, bisexual and transgender parents, given that young children do not have the ability to fully restrain themselves from talking about their family background. Laws criminalizing same-sex relationships and so-called "anti-propaganda" laws, even if not routinely implemented, essentially require children to conceal their lesbian, gay, bisexual and transgender parents' sexual orientations, because they could be used against their parents at any time. Children in such contexts may therefore choose to hide their familial status out of fear of being teased, ostracized or losing friends and, while doing so, risk isolating and distancing themselves from their peers.

8.5 According to the third parties, the lack of legal recognition of their family structure, as well as the existence of laws that stigmatize their parents' sexual orientation, adversely affects children of lesbian, gay, bisexual and transgender parents. Evidence reveals that growing up in a hostile legal and social climate has both direct and indirect impacts on the human rights of the children of lesbian, gay, bisexual and transgender parents, including their rights to health, education and freedom from discrimination.²²

8.6 Regarding the situation of children of lesbian, gay, bisexual and transgender parents in the Russian Federation, the disproportionately negative impact of "anti-propaganda" laws on lesbian, gay, bisexual and transgender children and children of lesbian, gay, bisexual and transgender parents, such as harassment and violence towards such children, is well documented.²³ A number of international and regional human rights bodies have expressed their concerns on that legislation in the Russian Federation, which encourages the stigmatization of and discrimination against, lesbian, gay, bisexual and transgender persons, including children, and children of lesbian, gay, bisexual and transgender parents. The International Lesbian, Gay, Bisexual, Trans and Intersex Association-Europe assessed the Russian Federation as "the worst country in Europe for sexual and gender minorities" and noted that the situation worsened with the adoption of the gay propaganda law.²⁴ In the context of a broader crackdown on human rights and the rule of law, discrimination and other forms of human rights violations against the lesbian, gay, bisexual and transgender communities are perpetrated in a climate of impunity and generally go unpunished, which

²⁰ UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees; Federal Court of Canada, *Sadeghi-Pari v. Canada (Minister of Citizenship and Immigration)*; European Court of Human Rights, *I.K. v. Switzerland*, application No. 21417/17; and Court of Justice of the European Union, *X, Y and Z v. Minister voor Immigratie en Asiel (Minister for Immigration and Asylum)*, joined cases No. C-199/12–No. C-201/12, para. 70.

²¹ UNHCR, Guidelines on International Protection No. 9, para. 33.

²² UNICEF, "Eliminating discrimination against children and parents based on sexual orientation and/or gender identity", Current Issues, No. 9, November 2014. Available from <https://www.unicef.org/media/91126/file>.

²³ See, e.g., the information from civil society organizations submitted to the Committee in the context of its review of the combined fourth and fifth periodic reports of the Russian Federation under the Convention, in 2013, namely: joint contribution of the Anti-discrimination Centre Memorial, Coming Out and the Russian LGBT Network; contribution of Human Rights Watch; contribution of Coming Out; contribution of the Russian LGBT Network; and NGO Coalition alternative report. Available from https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=RUS&Lang=EN.

²⁴ International Lesbian, Gay, Bisexual, Trans and Intersex Association-Europe, report of the Executive Board for 2012/13. The third parties note that the situation remains unchanged, as of 2019.

also legitimizes violence against lesbian, gay, bisexual and transgender people, influencing public opinion. The non-governmental organization also highlighted that children were at risk of being taken away from their parents by social services and that charges were laid against parents under the propaganda law, referring to several examples.²⁵ In a recent case, a Russian court ruled for the removal of custody rights from a Russian citizen on the sole basis that the petitioner was part of a same-sex union,²⁶ and, in another case, a transgender parent had his two adopted children removed and lost custody of them.

Author's comments on the third-party intervention

9. On 18 May 2020, the author submitted his comments on the third-party intervention, noting his agreement with the third parties and reiterating that, as described by the third parties, he is forced to conceal his mothers' sexual orientation in an attempt to avoid persecution, in fear of discovery and the resulting ill-treatment by State or non-State actors. The author believes that results in such psychological harm that it amounts to persecution. Accordingly, the Finnish authorities' decision to return the author and his family to the Russian Federation without an adequate assessment of the best interests of the child clearly constituted an arbitrary refoulement.

State party's comments on the third-party intervention

10. On 20 May 2020, the State party submitted its comments on the third-party intervention, providing that the third parties had not presented anything that would lead to assessing the communication differently than it had done in its previous observations and reiterating its previous observations regarding the assessment of the child's best interests by the migration authorities.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol, whether the communication is admissible.

11.2 The Committee takes note of the State party's argument that the author's allegations based on articles 3 and 22 of the Convention are inadmissible, because the same matter has been examined by the European Court of Human Rights. The Committee notes, however, the author's uncontested assertion that the complaint filed with the European Court of Human Rights concerned his mother's rights and that the Court nevertheless did not examine the case in substance, due to the non-fulfilment of formal requirements. The Committee considers that the Court did not examine the same matter within the meaning of article 7 (d) of the Optional Protocol, and it is therefore not precluded from examining the present communication on the basis of that provision.²⁷

11.3 The Committee takes note of the author's claims based on articles 2, 13, 14, 16, 17 and 29 of the Convention related to the incidents and constraints that the author experienced as a child of lesbian parents in the legal and social context of the Russian Federation. The Committee, notes, however, that the author has failed to sufficiently substantiate those claims as alleged violations of the State party's non-refoulement obligations and declares those parts of the communication inadmissible under article 7 (f) of the Optional Protocol.

11.4 The Committee notes, however, that the author's claims related to an alleged risk of being subjected to renewed maltreatment as a result of the decision by the Finnish authorities

²⁵ The third parties indicate that one of the examples highlighted is that of an openly gay journalist who was directly advised by her adoption attorney to leave the country because she was facing a real risk of losing her son, after she had organized a campaign against the "gay propaganda law". In another widely publicized case, in September 2019, a gay couple was forced to flee the Russian Federation after being targeted for raising two boys adopted by one of the partners.

²⁶ On 4 March 2015, the Sovietsky District Court, City of Astrakhan.

²⁷ *Y and Z v. Finland* (CRC/C/81/D/6/2016), para. 9.2.

to return him to the Russian Federation do fall within the State party's non-refoulement obligations, have been sufficiently substantiated for the purposes of admissibility and raise issues under article 19 of the Convention.

11.5 The Committee notes that the author's claims under articles 3 and 22 of the Convention, regarding the alleged failure of the national authorities to take the best interests of the child as a primary consideration in the context of the asylum and residence proceedings, have also been sufficiently substantiated for the purposes of admissibility.

11.6 Accordingly, the Committee declares the author's claims based on articles 3, 19 and 22 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

12.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

12.2 The Committee takes note of the author's claim that the national authorities failed to conduct a proper assessment of the best interests of the child in the examination of his application for asylum or residence permit, in violation of his rights under articles 3 and 22 of the Convention. In particular, the author alleged the absence of an individual assessment of his safety as a child of lesbian parents and the failure to consider his views during the proceedings, the absence of both of which is undisputed by the State party. The Committee recalls that the assessment of the existence of a risk of serious violations of the Convention in the receiving State should be conducted in an age-sensitive and gender-sensitive manner,²⁸ that the best interests of the child should be a primary consideration in decisions concerning the return of a child and that such decisions should ensure that, upon return, the child will be safe, provided with proper care and ensured the full and effective enjoyment of the rights recognized in the Convention and his or her holistic development.²⁹ The best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the return of a child,³⁰ and the legal rationale for all judicial and administrative judgments and decisions should also be based on that principle.³¹ The Committee recalls that the assessment of a child's best interests must include respect for the child's right to express his or her views freely and that due weight must be given to said views in all matters affecting the child.³² The Committee also recalls that it is generally for the authorities of States parties to the Convention to review and evaluate the facts and evidence in order to determine whether a risk of a serious violation of the Convention exists upon return, unless it is found that such an evaluation was clearly arbitrary or amounted to a denial of justice.³³

12.3 In the present case, the Committee notes that both the Finnish Immigration Service and the Helsinki Administrative Court referred to the family's past experience of threats and discrimination and to the bullying against the author, but concluded that those factors could not be considered as amounting to persecution. The Committee also notes that the Immigration Service's decision included a statement that the "best interests of any child was to be allowed to live together with his or her parents".

12.4 The Committee recalls that, in order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. In describing the motivation, a State party should state explicitly all the factual circumstances

²⁸ General comment No. 6 (2005), para. 27.

²⁹ Joint general comment No. 3/No. 22 (2017), paras. 28, 29 and 33.

³⁰ *Ibid.*, para. 30; *U.A.I. v. Spain* (CRC/C/73/D/2/2015), para. 4.2; *A.Y. v. Denmark*, para. 8.8; and *K.H. et al v. Spain* (CRC/C/82/D/32/2017), para.8.6.

³¹ CRC/C/FIN/CO/4, para. 28.

³² General comment No. 14 (2013), para. 43.

³³ *U.A.I. v. Spain*, para. 4.2; *Navarro Presentación and Medina Pascual v. Spain* (CRC/C/81/D/19/2017), para. 6.4; *A.Y. v. Denmark*, para. 8.8; and *C.E. v. Belgium* (CRC/C/79/D/12/2017), para. 8.4.

regarding the child, what elements have been found relevant in the assessment of the best interests of the child, the context of those elements in the specific case and how they were weighted to determine the child's best interests.³⁴ In that regard, the Committee observes that the formal and general reference to the best interests of the child by the Finnish Immigration Service, without having considered the author's views, reflects a failure to consider the specific circumstances surrounding the author's case and to assess the existence of a risk of a serious violation of the Convention against his specific circumstances.

12.5 The Committee notes that the authorities of the State party, in taking the decision to deport the author, failed to properly consider the real risk of a serious violation of the author's rights, such as violence and harassment, upon his return to the Russian Federation, which was foreseeable at the time of the decision based on his past experiences as the victim of discrimination and bullying. In particular, it notes the lack of consideration of the author's young age at the time of the decision and of the permanent impact that constant bullying and stigmatization based on his mothers' sexual orientation may have on the author. That resulted in the State party's failure to find a real risk of irreparable harm to the author as grounds for the application of non-refoulement obligations.

12.6 In the light of the foregoing, the Committee concludes that the State party failed to adequately take the best interests of the child as a primary consideration when assessing the author's asylum request based on his mothers' sexual orientation and to protect him against a real risk of irreparable harm in returning him to the Russian Federation.

13. The Committee, acting under article 10 (5) of the Optional Protocol, is of the view that the facts of which it has been apprised amount to a violation of articles 3, 19 and 22 of the Convention.

14. The State party notes that V.B. and A.S. applied for assisted voluntary return, which was granted, and that they returned to the Russian Federation, together with the author, on 7 August 2017. In the light of that, the Committee considers that, in the circumstances of the present case, the State party is under an obligation to provide an effective reparation to the author, including adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by ensuring that the best interests of the child are effectively and systematically taken into account in the context of asylum proceedings and that children are systematically heard.

15. Pursuant to article 11 of the Optional Protocol, the Committee wishes to receive from the State party, within 180 days, information about the steps it has taken to give effect to the Committee's Views. The State party is requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

³⁴ General comment No. 14 (2013), para. 97.