



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. 92/2019*, **

<i>Communication submitted by:</i>	K.S.G.
<i>Alleged victim:</i>	A.R.G.
<i>State party:</i>	Spain
<i>Date of communication:</i>	21 June 2019
<i>Date of adoption of decision:</i>	28 September 2020
<i>Subject matter:</i>	Best interests of the child; sexual abuse; separation of a minor from his parents
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Articles of the Convention:</i>	3, 6, 9, 12, 19 and 34
<i>Article of the Optional Protocol:</i>	7 (f)

1.1 The author of the communication is K.S.G., a British citizen born in 1989. She is submitting the communication on behalf of her son, A.R.G., born on 29 August 2014. The author is represented by counsel. The Optional Protocol entered into force for the State party on 14 April 2014.

1.2 Pursuant to article 6 of the Optional Protocol, the Committee, acting through its Working Group on Communications, rejected the author's request regarding the adoption of interim measures on 4 September 2019. The interim measures in question entailed the suspension of the visitation schedule drawn up for A.R.G.'s father while the criminal proceedings in which he is accused of sexually assaulting his son are ongoing. On the same date, the Committee determined, in accordance with rule 18 (1) of its rules of procedure, that a consideration of admissibility did not require sending the communication back to the State party for its comments.

The facts as submitted by the author

2.1 The author claims that A.R.G. was repeatedly subjected to sexual abuse by his father when A.R.G. was between 2 and 3 years of age. Three sets of legal proceedings – two

* Adopted by the Committee at its eighty-fifth session (14 September–1 October 2020).

** The following members of the Committee participated in the examination of the communication:
Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffé, Olga A. Khazova,
Gehad Madi, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, José Ángel
Rodríguez Reyes, Ann Marie Skelton, Velina Todorova and Renate Winter.



criminal and one civil – were initiated in this connection. In the first set of criminal proceedings, the father was investigated for having allegedly sexually assaulted and sexually abused his son between March 2017 and May 2018. Once these criminal proceedings were under way, A.R.G.’s father applied to the civil courts for provisional measures in the form of shared custody of his son. On 18 September 2017, the judge awarded custody of A.R.G. to his mother and laid down a visitation schedule for his father. In the third set of proceedings (the second set of criminal proceedings), which are ongoing, the father was investigated for having caused bodily harm to his son in March 2018.

2.2 After she filed the complaint that gave rise to the second set of criminal proceedings, the author reneged on the visitation schedule because she wished to protect A.R.G. from his father. On 19 March 2018, the author applied for precautionary measures consisting of a protection order prohibiting A.R.G.’s father from approaching or communicating with him and suspending the visitation schedule.

2.3 On 9 July 2018, Court of Investigation No. 1 of Blanes refused to grant the precautionary measures requested by the author, without prejudice to the possibility that the outcome of subsequent investigations might justify their adoption. On 30 January 2019, the author submitted a further request for precautionary measures to the same Court of Investigation, which it rejected on 27 February 2019. This decision was appealed before the Provincial High Court of Girona on 5 March 2019. On 7 May 2019, the Provincial High Court of Girona upheld the decision not to grant precautionary measures but modified the visitation schedule so that the visits in question would take place on alternate weekends, without overnight stays, and in the presence of a third person designated by the father and a relative of A.R.G. or, failing that, in the presence of social workers at a meeting point designated by the competent social services.

The complaint

3.1 The author claims that the case discloses a conflict between the rights of A.R.G. (his best interests and his right to safety, to life, to physical and psychological integrity and to protection against any kind of violence) and his father’s right to presumption of innocence. However, the Spanish courts have prioritized the father’s right over those of A.R.G., without taking into account the best interests of the child, which take precedence over any other interest at stake.

3.2 The author asserts that the change made to the visitation schedule by the Provincial High Court does not protect A.R.G. from his father and forces A.R.G., as the victim, to see his abuser. Among other issues, the elimination of overnight stays does not guarantee that the offence will not be committed again, as there is no guarantee that the child will not be left alone with his father. At the same time, the author claims that the child’s development will be adversely affected if he is forced to spend time with his father.

3.3 The author claims a violation of article 3 of the Convention, insofar as the best interests of the child, which are considered to take precedence over any other interests at stake, have not been taken into account. A.R.G.’s right to life, as protected under article 6, which includes the right to live freely and with dignity, has also been violated, as he is forced to spend time with the person who has sexually abused him. A.R.G.’s right to be separated from his father, as recognized in article 9, is being violated by the State party. The author also claims that adequate account has not been taken of A.R.G.’s right to be heard in the aforementioned legal proceedings, in violation of article 12 of the Convention. Lastly, the author maintains that the measures necessary to protect A.R.G. against all forms of violence, including sexual abuse, have not been adopted, in violation of articles 19 and 34 of the Convention.¹

¹ The author cites general comments No. 7 (2005) on implementing child rights in early childhood; No. 12 (2009) on the right of the child to be heard; No. 13 (2011) on the right of the child to freedom from all forms of violence; and No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 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.

4.2 The Committee takes note of the author's claims that the national courts, by refusing to grant precautionary measures that would have completely suspended the father's visitation schedule, did not take adequate account of A.R.G.'s best interests, in violation of the right recognized in article 3 of the Convention. The Committee recalls that, as a general rule, it comes under the jurisdiction of the national courts to examine the facts and evidence and to interpret domestic law, unless such examination or interpretation is clearly arbitrary or amounts to a denial of justice.² The Committee notes that, in reaching their respective decisions, the Court of Investigation No. 1 of Blanes and the Provincial High Court of Girona assessed the danger posed to A.R.G. and decided not to grant precautionary measures. The Provincial High Court, invoking the need to protect the child's interests, modified the visitation schedule to avoid situations in which father and son would be alone together. The Committee considers that, although the author disagrees with the decisions taken by the national authorities, she has not demonstrated that the examination of the facts and evidence by these authorities was clearly arbitrary or amounted to a denial of justice. Consequently, the Committee considers that this claim has not been sufficiently substantiated and declares it inadmissible under article 7 (f) of the Optional Protocol.

4.3 With regard to the author's claims under articles 6, 9, 12, 19 and 34 of the Convention, the Committee considers that she has not sufficiently substantiated her claim that A.R.G.'s rights under these provisions have been violated as a result of the refusal to totally suspend the visitation schedule, which the Provincial High Court simply modified. The Committee therefore finds that these claims are manifestly ill-founded and also declares them inadmissible under article 7 (f) of the Optional Protocol.

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

- (a) That the communication is inadmissible under article 7 (f) of the Optional Protocol;
 - (b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.
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² See, *inter alia*, the Committee's decisions of inadmissibility in *A.A.A. v. Spain* (CRC/C/73/D/2/2015), para. 4.2, and in *Navarro et al. v. Spain* (CRC/C/81/D/19/2017), para. 6.4.