



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. 90/2019*, **

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| <i>Communication submitted by:</i> | Chief Public Defender of the Nation (Stella Maris Martínez) |
| <i>Alleged victims:</i> | E.H.R.S., A.I.R.S. and A.H.R.S. |
| <i>State party:</i> | Argentina |
| <i>Date of communication:</i> | 5 July 2019 |
| <i>Subject matter:</i> | Deportation of a Peruvian woman, mother of three Argentine children, for a crime committed on entering the State party |

1. The authors of the communication are two girls and a boy of Argentine nationality: E.H.R.S. (12 years old), A.I.R.S. (10 years old) and A.H.R.S. (1 year old). They claim to be the victims of violations of their rights under articles 3 (1), 6, 7, 8, 9 (1) and (2), 12 (1) and (2), 16, 27 and 37 of the Convention on the Rights of the Child. They are represented by the Chief Public Defender.

2. The authors' mother, R.A.S.O., a Peruvian national, emigrated to Argentina in 2000. On entering the country, she was arrested for possession of drugs intended for sale and was sentenced to 4 and a half years' imprisonment and deportation with a further eight-year ban on re-entry after serving her sentence. She was released from prison in 2003 and, in 2004, the National Migration Directorate declared her an illegal resident and demanded her expulsion. She appealed this decision administratively before the Directorate, then judicially before Federal Administrative Court No. 7 and ultimately the Supreme Court of Justice, which issued a ruling on 2 May 2019 confirming her expulsion.

3. During the appeal proceedings, she met her partner and gave birth to the three authors of the communication, born in 2008, 2009 and 2019, respectively. The authors claim that, during the administrative and judicial proceedings, their mother repeatedly notified the authorities of the birth of her first two daughters and argued that their expulsion would violate the human rights of her children born in Argentina. At no point did the administrative or judicial authorities allow the Public Defender's Office for Children to intervene, nor did they give the girls the opportunity to express their opinion or take into account their best interests.

* 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.



4. The authors claim that their right to have their best interests be a “primary consideration”, in accordance with article 3 (1) of the Convention, was violated. They also claim that their right to be given “an opportunity to participate in the proceedings and make their views known” was violated, contrary to article 9 (2) of the Convention. Furthermore, since no weight was given to their views during the proceedings and they were not given the opportunity to be heard, their rights under article 12 (1) and (2) were violated.

5. They claim that, if the deportation were to take place, their rights not to be separated from their mother against their will under articles 7 and 9 (1) and not to be subjected to arbitrary or unlawful interference with their privacy, family or home under article 16 would also be violated. They also claim that their mother’s deportation would violate their rights to survival, development, identity and personal integrity under articles 6, 8, 27 and 37.

6. The authors request the annulment of the deportation decision and the ban on re-entry into Argentina; the recognition of the international responsibility of Argentina for the violation of authors’ rights; and adequate and proportionate reparation for these violations. More generally, the authors also request guarantees of non-repetition in relation to procedures involving the expulsion of migrant parents.

7. On 10 July 2019, the Committee requested the State party to take interim measures in the form of a suspension of the deportation of the authors’ mother while the case was under consideration by the Committee.

8. On 8 November 2019, the State party submitted its observations on admissibility. On 23 December 2019, the authors submitted their comments on the State party’s observations on admissibility.

9. On 13 June 2020, the State party submitted further information explaining that, following the change of Government and in accordance with its obligation to comply with the Committee’s request for interim measures, the National Migration Directorate had decided to definitively suspend the deportation of the complainants’ mother on 20 March 2020. At the same time, it explained that, on 1 June 2020, the Directorate had issued a decision granting her permanent resident status in the country. The State party therefore requested that the communication be discontinued, as it had become devoid of purpose.

10. On 7 August 2020, the authors confirmed the information submitted by the State party and accepted its request to discontinue consideration of the communication. However, they requested that the Committee confirm, in its decision on discontinuance, “the general obligation to guarantee the rights of children in any administrative or judicial migration process involving their parents which may result in a deportation order affecting them directly or indirectly”.

11. At its meeting on 28 September 2020, the Committee on the Rights of the Child, having considered the State party’s request for discontinuance, noted that the purpose of the communication had been to prevent the authors’ mother from being deported and that such deportation could not take place in the current circumstances. Although this fact does not in itself amount to full reparation for the alleged violations of the Convention, the Committee is of the view that the decision not to deport the authors’ mother and to grant her permanent resident status leaves the present communication devoid of purpose and decides to discontinue its consideration of communication No. 90/2019, 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.
