



# 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. 98/2019\* \*\*

<i>Communication submitted by:</i>	R.N.
<i>Alleged victim:</i>	L.H.A.N.
<i>State party:</i>	Finland
<i>Date of communication:</i>	15 August 2019 (initial submission)
<i>Date of adoption of decision:</i>	28 September 2020
<i>Subject matter:</i>	Best interests of the child; children's rights
<i>Procedural issues:</i>	Victim status; consent; exhaustion of domestic remedies; insufficient substantiation of claims
<i>Articles of the Convention:</i>	2 (2), 3, 4, 6 (2), 8 (1), 9 (1), (2) and (3), 12, 13, 14, 16, 18 (1) and (2), 19, 20, 23, 24, 25, 27 (1), (2) and (4), 31, 34, 35, 36, 37 (a) and 39
<i>Articles of the Optional Protocol:</i>	3 (2), 5 (2) and 7 (c), (e) and (f)

1.1 The author of the communication is R.N., a national of Finland born in 1982. She submits the communication on behalf of her son, L.H.A.N., born in 2009. She is not represented by counsel. The Optional Protocol on a communications procedure entered into force for the State party on 12 February 2016.

1.2 On 28 August 2019, the Committee, through its working group on communications, rejected the author's request for interim measures.

1.3 On 2 January 2020, the Committee, through its working group on communications, decided to examine the admissibility of the communication separately from its merits.

#### Facts as submitted by the author

2.1 The author submits that the father of L.H.A.N. has harassed her for years and has neglected L.H.A.N. In the summer of 2017, when she requested him to pay child maintenance, he started threatening her and using physical and psychological violence

\* 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.



against L.H.A.N., including, on occasion, throwing or pushing the child against the wall. The father alienated the child from the author by telling him what to say to child welfare officers and by manipulating him so that he would speak negatively about the author's residence. The father was obstructive in matters concerning the child and manipulated officials by filing a child welfare report about the author, in which he falsely accused her of what was in fact his own wrongful behaviour, including his beating and neglect of the child. He also made the child's school taxi go to his residence despite the author's status as the primary custodial parent.

2.2 The author argues that the authorities have "attacked" her and L.H.A.N. on the basis of the father's statements, including when a recording of the father's treatment of the child was used against the author in the Pirkanmaa District Court's custody decision of 29 June 2019, which concluded that the child was not feeling safe at her residence. The father also threatened her, warning her not to talk about the domestic violence that she and L.H.A.N. had endured. However, the authorities did not acknowledge the threat. The father has been permitted to control the lives of the author and L.H.A.N., including by withholding the child's passport to prevent him from going on a trip with her. Further, on 14 November 2017, the Pirkanmaa District Court ordered the father to pay child maintenance, but he refused to do so. He also refused to pay for the child's medicine and his share of the child's after-school day-care fee.

2.3 The author asserts that a social worker falsely accused her of beating the child. Likewise, an officer of the emergency social services, whom she called about the father in February 2018, filed a report about the author herself rather than the father.

2.4 The author applied for sole custody in early 2018, because the father's violence towards the child had reached an unacceptable level, as she had seen bruises on the child. She argues that the custody proceedings were "below any standards", because the father's defamatory statements about her were presented as "real", and a social worker on the father's side suggested that she had imagined the violence. The author claims that, on the basis of the father's lies and a mistaken understanding of the child's wishes, the Pirkanmaa District Court decided to let the child reside with the father. Her lawyer considered that the State party's authorities accorded an undue weight to the child's wishes in their decisions and rulings and that the District Court paid insufficient attention to the evidence of the child's good relationship with her and that the father manipulated the child to express his wishes in the father's favour. Given these mistakes and because of what social workers have written about her, the author has refused to attend supervised meetings.

2.5 The author submits that L.H.A.N. has been "forced" to reside with his father since March 2018. L.H.A.N. informed her that his father and stepmother had convinced him that he should live with them. The author contacted social welfare services and the police when the father did not return the child when he was supposed to do so, but no one helped. She also submits that a hearing was arranged in the spring of 2018 to question the child about how the author had allegedly beaten him. She claims that the hearing was not in his best interest as a child. The child came to visit the author several times in the summer of 2018, even though the father followed and stopped him once and "tried to spread rumours".

2.6 In the spring of 2019, the child's condition deteriorated. He had recurrent fits of rage, insulted the teachers, threatened to kill himself and others, talked of raping someone and threw objects. His teacher and the school principal concluded that he was unable to attend school and attributed his behaviour to his living conditions. In April 2019, child welfare officers took him to a family support centre, where he was reported to be suffering from, inter alia, anxiety attacks, sleeplessness, lapses into unconsciousness, fits of rage and tics. Two months later, child welfare services reported that he was no longer exhibiting those symptoms and he was returned to his father. The author states that this decision was inexplicable because his teachers had confirmed that the child had never had such serious symptoms when residing with her.

2.7 In August 2019, the author was informed that a suit would be filed against her on the basis of the false accusation that she had beaten the child, rendering her unable to apply for sole custody despite having previously been given advice about transfer of custody.

2.8 The author submits that she has exhausted all available domestic remedies through complaints and court proceedings between 2017 and 2019. She has often contacted child welfare services and the child's supervisor when the father "broke the custodial contract". However, they were unreceptive. She pressed charges four times against the father and the stepmother for defamation. In addition, she pressed charges against the father three times for his physical abuse of L.H.A.N; five times for threats and verbal abuse towards L.H.A.N. and herself; and twice for kidnapping or wrongful "imprisonment" of the child, to no avail. The police did not initiate investigations, citing a lack of evidence, and because they suspected that the author rather than the father was responsible. Instead, the police advised that she discuss the issues at hand with the father. She also pressed charges against a police officer who decided not to investigate the physical abuse, in response to which the Prosecutor-General stated that no mistake had been made. Additionally, she filed administrative complaints against the police officers who had terminated an investigation of the verbal abuse and who had prepared a report concerning abuse allegedly committed by the author. In that case, it was also stated that the police had not made a mistake.

2.9 The author also pressed charges against the social worker who decided to return the child to the father after the child's stay in the family support centre. Additionally, she pressed charges of defamation and malfeasance by social workers. She filed four complaints with the Regional State Administrative Agency, which in response sent three reminders to heads of social services of the Tampere municipality, who in turn only blamed the author.

2.10 The author applied to the Pirkanmaa District Court for sole custody and a provisional order to change the child's place of residence to hers, but she was unsuccessful. She then appealed to the Court of Appeal in Turku and the Supreme Court, both of which declined leave to appeal.

2.11 The author filed four complaints with the Parliamentary Ombudsman, who declined to investigate, because she had, among other things, already complained to the Regional State Administrative Agency. She also filed complaints with the Office of the Chancellor of Justice about the custody order and about one of the police officers who had decided not to investigate the physical abuse committed in the period 2015–2016. Neither of these complaints were investigated. She requested a restraining order against the father, but she was unsuccessful and appealed in vain to the Turku Court of Appeal. She approached the Tampere municipality through its website and tried to sue it for malfeasance and mistreatment of the child but was advised against this course of action. Finally, she solicited help from a domestic violence clinic, which recognized the father's violent behaviour.

2.12 The author requests that the Committee intervene in the child's situation, claiming that the father's violence should be stopped, that he should be penalized, and that court orders and decisions of the child welfare officers should provide full legal protection. The author submits that the child should return to her residence.

### **Complaint**

3.1 The author claims that the State party has violated the child's rights under articles 2 (2), 3, 4, 18 (1) and (2), 24, 25, 35 and 39 of the Convention as a result of its neglect towards the child. She argues that the State party has breached article 3 of the Convention in that its authorities have allowed the father to kidnap, threaten, manipulate, and physically and psychologically abuse the child and to remove him from the author. The authorities disregarded the law and failed to recognize that the child's expressions were based on the father's manipulations. Moreover, they joined the father in his attacks on the author. The State party also breached article 4 of the Convention, because it made the child's situation worse. It also failed to support parental cooperation and broke the custodial contract, in violation of articles 18 (1) and (2). With reference to article 24 of the Convention, the author claims that the authorities violated the child's right to the enjoyment of the highest attainable standard of health. Moreover, they did not listen to her in respect of the child's placement in the family support centre, in breach of article 25 of the Convention. The State party violated article 35 of the Convention as it allowed the father to kidnap the child. In

breach of article 39 of the Convention, it has not allowed the child to recover. The State party's authorities disregarded the author because she is a woman.

3.2 The author claims that the State party has violated articles 8 (1) and 9 (1), (2) and (3) of the Convention because, on the basis of the false information provided by the father, its authorities allowed him to separate the child from the author for four months despite the custodial agreement providing for the child's presence at her residence every other week. The author submits that there was no reason to separate the child from her. The authorities did not listen to her and did not try to arrange for the child to see her.

3.3 The author further claims that the State party has breached articles 12, 13 and 14 of the Convention. She submits that national authorities failed to listen to the child when he voiced his own opinions. Instead, the authorities based their decisions on what the child said after the father had manipulated him, and they allowed the father to threaten the author and the child, as well as the child's teachers. The authorities did not acknowledge that the father had forced his opinion on them and on the child; that the father controlled the child's thinking; or that the child's alienation from the author had affected the child's views.

3.4 The author submits that the State party has breached articles 6 (2), 16, 19, 27 (1), (2) and (4), 36 and 37 (a) of the Convention as a result of the violence inflicted on the child by the father. She argues that the State party has violated article 6 of the Convention in that its authorities deny that anything is wrong with the child, despite documentation stating that he talks about killing himself. His fear of his father has hindered his development and inhibits him from thinking about his own life and emotions. Referring to article 16 of the Convention, the author notes that the father has manipulated and threatened the child, including through false rumours, and that the father has made the child despise her, which has affected the child's self-esteem. The father has limited the author's life with the child by withholding his passport when she was planning a holiday with the child and by preventing him from visiting her. By stopping its investigations, the State party's authorities have allowed the father to defame the author, and the child has learned to distrust her. The State party has breached articles 19 and 37 (a) of the Convention by allowing the father's violence against the author and the child and because of the child's feeling of guilt for the punishment of the author. They have also joined the father in his attacks. The child was retraumatized when he was returned to his father after staying in the family support centre. The reports that the author filed have not alleviated the child's situation. Referring to articles 27 (1), (2) and (4) of the Convention, the author claims that the child is being encouraged to control and to bully. He has learned violent and pornographic vocabulary from his phone, which his father lets him use without restriction. The father has isolated the child and exposed the child to his own white supremacist views. The State party's authorities have failed to ensure the father's payment of maintenance. Moreover, in violation of article 36 of the Convention, the State party has allowed the child to be used in the father's conflict with the author.

3.5 The author submits that the State party has violated article 20 of the Convention because its authorities did not provide the child with the option of living with the author when he was discharged from the family support centre. The State party also breached article 23 of the Convention, as the child – who has symptoms of attention deficit/hyperactivity disorder and Asperger syndrome, requires special attention – but the authorities have allowed the father to neglect the child's needs and to prevent the child from seeing the author, despite her support for him. The State party also violated article 31 of the Convention, as the authorities have not supervised the father regarding his respect for the child's reduced school schedule, which was arranged to facilitate the child's rest. Finally, the State party has breached article 34 of the Convention, as the child has access to violent and pornographic material through his phone, despite the school's efforts to ensure its restricted use.

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

4.1 In its observations dated 11 November 2019, the State party notes that the parents have joint custody and that after their divorce in 2011, the child lived with them individually on alternate weeks until March 2018. On 2 May 2015, the custodial agreement was amended so that the joint custody continued but the child was to live with the mother

and visit the father, alternating every week. The relation between the parents deteriorated starting in the autumn of 2016. On 26 July 2017, an assessment for social welfare needs was conducted, and the child has received such services since March 2018. On 1 August 2017, the author requested sole custody and paternal child maintenance from the Pirkanmaa District Court. On 29 June 2018, the District Court rejected the maintenance claim and ordered the joint custody to continue. The child was to live with the father, in part because of the child's wish to do so, and he was to see his mother with supervision, a solution found to be in the child's best interests. The Court granted the author a right to supervised visits. On 24 September 2018 and 9 May 2019, the Turku Court of Appeal and the Supreme Court, respectively, denied leave for continued consideration and appeal. The child has been living with his father since March 2018 and has not seen the author, except in connection with the procedures. On 26 November 2018, she requested that the child reside with her, which the Pirkanmaa District Court rejected on 21 February 2019, on the ground that the same matter was pending before the Supreme Court. On 24 April 2019, it was decided under the Child Welfare Act to urgently place the child in a family support centre, with a view to calming his violent behaviour. The placement was extended by a decision dated 23 May 2019.

4.2 The State party submits that the communication is inadmissible for failure to exhaust all available domestic remedies under article 7 (e) of the Optional Protocol, as the author did not invoke any of the Convention articles in the domestic proceedings. Moreover, insofar as the criminal procedures are concerned, she has not explained why she did not exercise her secondary right of prosecution under chapter 1, section 14, of the Criminal Procedure Act, which provides for such a right when prosecution has been waived, or when it has been decided that a criminal investigation will be discontinued, terminated or not conducted. Furthermore, the author could have claimed damages or requested that the civil servants concerned be punished under the Criminal Code, the Tort Liability Act and section 118, subsection 3, of the Constitution.

4.3 On the alleged disregard of the author's opinion in the decision to place the child in a family support centre, the State party observes that under section 39 (a) of the Child Welfare Act, the requirement to ascertain parental opinions may be waived if the delay will cause harm to the child's health, development or security. It also observes that the author has not availed herself of her right to appeal the placement decision to an administrative court under section 90 of the Child Welfare Act.

4.4 Referring to article 5 of the Optional Protocol and an earlier decision of the Committee, the State party observes that most of the alleged violations only concern the author, without directly affecting the child. Since she is not a child, these claims are inadmissible for a lack of victim status under article 7 (c) of the Optional Protocol.<sup>1</sup>

4.5 The State party further observes that, while the author has joint custody over the child, any remedies pursued for the violation of his rights should be in his best interests, and there is a risk that the views expressed may not reflect his own opinions but rather those of the parent writing on the child's behalf. The State party submits that in the present case, as the child's age is above 10 years, his opinion should be considered. With reference to rule 13 of the Committee's rules of procedure and paragraph 96 of the Committee's general comment No. 14 (2013), the State party emphasizes that the author has not provided proof of the child's consent and has not justified her action on his behalf. The State party notes that, given the circumstances of the case, there is a manifest conflict of interests between the child and the author, and the State party observes that it should be examined whether the communication was indeed lodged in his best interests, in order for example to prevent the manipulation of the child. The State party concludes that the communication should be declared inadmissible under articles 3 (2) and 5 (2) of the Optional Protocol.

4.6 The State party additionally argues that the communication is inadmissible as manifestly ill-founded under article 7 (f) of the Optional Protocol, submitting that the core of the communication is that the author is dissatisfied with the legitimate outcome of the domestic proceedings concerning her claims for sole custody and child maintenance and the

<sup>1</sup> *Y. and Z. v. Finland* (CRC/C/81/D/6/2016), para. 9.3.

child's residence with the father. Referring to an earlier decision of the Committee, the State party argues that it is not the role of the Committee to function as a court of fourth instance. It stresses that the author has not demonstrated that the courts' assessment of the facts and evidence was clearly arbitrary or otherwise amounted to a denial of justice.<sup>2</sup>

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

5.1 On 13 December 2019, the author provided her comments on the State party's observations. With regard to the State party's reflection of the facts, she reiterates that the father was ordered to pay maintenance in November 2017. She notes having requested an order that the child reside with her on the grounds of the father's violence and the admission by social workers and a psychiatrist of the seriousness of the facts as presented by her.

5.2 With regard to the exhaustion of remedies, the author states that she could not do anything about the police decision not to investigate the allegation concerning the father's beating of the child and that her lawyer had advised her that the prosecutor would not take her case. She intended to sue the father and several civil servants, but a police officer who had spoken with a prosecutor told her that such a case had no prospects of success. Taking that advice and the high financial costs of a case into consideration, she decided against that course of action. Moreover, after a social worker had falsely brought charges against her, she concluded that it was impossible to intervene in the misconduct of social workers. She asserts that she did claim damages and requested the civil servants involved to be sentenced, but that the police did not investigate the matter. On the advice of her lawyer, the author did not appeal the child's placement in the family support centre, as an appeal would not have changed the decision.

5.3 With regard to the State party's observations on the requirement of victim status, the author submits that the communication concerns violations of the child's rights and that explaining the facts requires that she also be mentioned. She argues that the authorities have based their decisions on the father's manipulations, rather than the child's opinion, and that the inability of the child to express himself motivated her to lodge the communication. According to her, the judges and social workers based their decisions only on the father's submissions, including when they claimed that she was irrational when speaking about his acts of violence, despite his history of domestic violence.

5.4 The author contests that her communication is manifestly ill-founded and claims that the domestic proceedings were arbitrary, as it is dangerous for the child's development that the authorities did not adequately assess the cause of his problems.

#### **Author's further comments**

6.1 On 13 February, 23 March, and 9, 12, 23 and 24 June 2020, the author provided further comments, noting that despite his paternal family's efforts to manipulate him, the child had texted the author saying he would kill himself if she did not arrange supervised meetings. She believes that such meetings would not stop the father's violence. She informed social services, which told her that it had discussed the matter with the father, although it was clear, in the author's submission, that this would not solve the situation. Following a call by the author, an ambulance went to check on the child on 12 June 2020, but she was not informed of the aftermath. In response to further calls, social services informed her that it was not going to take immediate action, but that a social worker would contact the parents. She was advised to contact the father despite his acts of violence towards her. Otherwise, she was only informed of a charge filed by the father for an infringement of his private life because of a private post on social media. She submits that the police intend to prevent her from talking about the child's condition and domestic violence.

6.2 The author requests compensation for the time spent preparing the communication and for the loss of her allowances and the non-receipt of child maintenance because of the conflict with the child's father.

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<sup>2</sup> Ibid., paras. 9.7–9.8.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 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 under the Optional Protocol.

7.2 The Committee notes the State party's claim that the communication is inadmissible under articles 3 (2) and 5 (2) of the Optional Protocol, on the basis that there is a manifest conflict of interests between the child and the author. The State party observes that the author has not provided proof of the child's consent to lodge the communication, nor has she justified her action on his behalf. The State party further contends that there is a need to assess whether the communication was indeed lodged in his best interests. Nonetheless, the Committee recalls that, under the provisions cited, a communication may be submitted on behalf of alleged victims without their express consent, when the author can justify acting on their behalf and the Committee deems it to be in the best interests of the child.<sup>3</sup> The Committee notes that L.H.A.N. was 10 years old when the communication was submitted, and that he was capable of discerning and expressing his views. Nevertheless, the Committee notes that the author is the child's mother and that she has joint custody. The Committee considers that the material before it does not indicate that the submission of the communication is clearly against his best interests. Therefore, it concludes that there is no obstacle to the admissibility of the communication under articles 3 (2) and 5 (2) of the Optional Protocol.

7.3 The Committee notes the State party's contention that the communication is inadmissible on the ground that the author has not exhausted all available domestic remedies because she failed, during the domestic proceedings, to invoke any of the Convention articles she now raises in her communication, and because she failed to: exercise her right of secondary prosecution; claim damages; request that the civil servants concerned be punished; or appeal the placement decision to an administrative court under section 90 of the Child Welfare Act. Noting that the author initiated several administrative and criminal proceedings raising in substance the issues presented in the communication (para. 2.8), the Committee considers that the State party has not indicated specific remedies that the author failed to pursue and that would be available and effective in her case to address the violations alleged before the Committee. Accordingly, the Committee considers that it is not precluded by article 7 (e) from considering the communication.

7.4 The Committee notes the author's claims that the various domestic custody and criminal proceedings were arbitrary, as the authorities failed to recognize that L.H.A.N. was being manipulated by his father and also failed to protect him against the father's alleged abuse. It also notes the State party's contention that the communication is inadmissible as manifestly ill-founded and motivated by the author's dissatisfaction with the outcome of the domestic proceedings.

7.5 The Committee recalls that it is for the national authorities to examine the facts and evidence and to interpret and enforce domestic law, unless their assessment has been clearly arbitrary or amounts to a denial of justice.<sup>4</sup> It is therefore not for the Committee to assess the facts of the case and the evidence in place of the national authorities but to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that the best interests of the child were a primary consideration in that assessment. In the present case, the Committee notes that it appears from the domestic decisions that the authorities heard both parents and the child in their decision-making, and that the author's allegations concerning the father's manipulations, violence and harassment were duly considered but dismissed as unsubstantiated and uncorroborated. The Committee also notes that, in the custody proceedings, the Pirkanmaa District Court based its decision on a social report on the child's behaviour, needs and best interests, in which it was stated that the child's own thoughts were clearly his own, that he had himself initiated his residence with the father

<sup>3</sup> Ibid., para. 9.4.

<sup>4</sup> Ibid., para. 9.8.

since March 2018 and that that arrangement was in his best interests. The Committee considers that, while the author disagrees with the conclusions reached by the domestic authorities, she has not demonstrated that the authorities' assessment of the facts and evidence, including the child's wishes and their handling of his behaviour and relations with his parents, was clearly arbitrary or otherwise amounted to a denial of justice. Therefore, the Committee considers that the communication is manifestly ill-founded and accordingly inadmissible under article 7 (f) of the Optional Protocol.

7.6 In the light of this conclusion, the Committee decides not to examine any other inadmissibility grounds invoked by the State party.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 7 (f) 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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