



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Decision 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 in respect of communication No. 6/2016\*\* \* \*\*

<i>Communication submitted by:</i>	X (not represented by counsel)
<i>Alleged victims:</i>	Y and Z
<i>State party:</i>	Finland
<i>Date of communication:</i>	16 July 2016
<i>Date of adoption of decision:</i>	15 May 2019
<i>Subject matter:</i>	Children's contact with mother
<i>Procedural issues:</i>	Admissibility: manifestly ill-founded; <i>ratione materiae</i> ; <i>ratione temporis</i> ; same matter examined under another procedure of international investigation or settlement; victim status
<i>Substantive issues:</i>	Best interests of the child; children's rights
<i>Articles of the Convention:</i>	2, 3, 5, 6, 7, 9, 12, 13, 14, 18, 19, 24, 29, 30 and 39
<i>Articles of the Optional Protocol:</i>	5 (1), 5 (2), 7 (c)–(f)

1. The author of the communication is X, a national of Finland born in 1978. She submits the communication on behalf of her children, Y and Z, Finnish nationals born on 14 January 2012. She claims that Finland has violated her rights and the rights of her children under articles 2, 3, 5, 6, 7, 9, 12, 13, 14, 18, 19, 24, 29 and 39 of the Convention on the Rights of the Child. The author is not represented by counsel. The Optional Protocol to the Convention entered into force for Finland on 12 February 2016.

\* Reissued for technical reasons on 20 August 2019.

\*\* Adopted by the Committee at its eighty-first session (13–31 May 2019).

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



**The facts as submitted by the author**

2.1 In January 2012, the author had twin children, Y and Z. The author claims that the children's father tried to compel her to have an abortion before the children were born; that he inflicted physical violence on her several times in 2011 and 2012, including while she was pregnant with the children; that such acts of violence were witnessed by the two children at various points in 2012, 2013 and 2015; and that, from January to April 2012, he also inflicted violence upon the two children, including by kicking them, dropping them from his lap when he was inebriated, shouting and threatening them and punching them in the head. On 8 April 2012, the author took the children and left the family's apartment.

2.2 In June 2012, the father filed for sole custody of the children. After the author reported to the police that the father had assaulted her on various occasions, the case was sent to the Prosecutor's Office on 8 January 2013. On 19 September 2013, after a cursory investigation, the Prosecutor decided not to prosecute the father due to insufficient evidence. On 19 October 2013, the father started visiting the children under supervision.

2.3 On 4 December 2013, the Kymenlaakso District Court awarded the father sole custody of the children, and ordered that they live with him as of 1 May 2014. The author was granted visitation rights, according to which she was to have the children in her own home every other week, from Thursday to Sunday.

2.4 The author alleges that, on 15 December 2013, she took her children to a shelter for a supervised visit with the father. Upon arrival, he attacked the author, causing a contusion on her right shoulder. She reported the event to the police and consulted a doctor the next day.

2.5 On 17 January 2014, the author appealed the custody decision of the Kymenlaakso District Court of 4 December 2013 before the Kouvola Court of Appeal. She also requested a stay of the implementation of the District Court decision during the appeal, and later requested suspension of the enforcement of the District Court decision. The requests were denied in 2014.

2.6 On 10 April 2014, Pori Social Services removed the children from the author's parents' home without prior notice and placed them in emergency care in the orphanage of Kalevanpuisto, in Pori. The arbitrary decision to carry out an emergency placement was never reviewed by a competent authority.

2.7 On 2 May 2014, the author was informed by Pori Social Services that the children had left the Kalevanpuisto orphanage and had been placed in the custody of their father, who had taken them to his house in Iitti. The author claims that the decision was arbitrary, as the authorities provided no reason for giving custody of the children to the father, while the author had always been their primary caregiver. From 2 May 2014 to 30 March 2015, and at various points thereafter, the father refused to allow the author to speak with her sons on the phone. In May 2014, the father hindered the author's scheduled weekend visits with the children, and when the author visited the children on 18 May 2014, their physical and cognitive condition had deteriorated.

2.8 On 16 May 2014, the author applied to Itä-Soumi Court for interim measures, requesting the Court to order that the children reside with her; on the same day, the Court denied her request. On 12 June 2014, the Eastern Finland Court of Appeal denied the author's appeal of the District Court decision awarding the father sole custody of the children. The author was granted supervised visits once a week for two hours, during the period from 12 June to 31 October 2014; as of 1 November 2014, she was granted weekend visits every other weekend from Thursday to Sunday, and six to seven weeks of holiday visits each year. On 12 September 2014, the Supreme Court upheld the decision, without granting the author leave to appeal.

2.9 The author maintains that, from 2014 to 2016, the children continuously had bruises and other injuries, and told her that the father hit and hurt them. During that period, they told the author that they were afraid of their father and strongly opposed returning to him, including by crying, kicking, running or hiding. On several occasions during that period, the author reported such injuries to the authorities, including child protection services and the police, but appropriate action was not taken. On 26 October 2014, the author claims that

the children witnessed potentially life-threatening violence while they were at their father's residence. The father provided conflicting information about the incident to the authorities. On 12 September 2015, a doctor from Satakunta Central Hospital filed a criminal report with the police, due to injuries on Y's hand. On the same date, Y told the author that his father had hit him. In a report dated 14 December 2015, another doctor stated, after examining the children's injuries, that the skin injuries, bruises and wounds were mainly in areas that typically are injured in accidents. He concluded that there were "no unequivocal injuries that would clearly be caused by the suspected assault" but also that "the examination does not exclude the suspected assaults".

2.10 The author asserts that, on 13 September 2015, the children's father assaulted her when she was returning the children to him. She reported the assault immediately to her social worker, but the latter told the author that she had not seen anything and pressured the author to return the children to the father. On the same date, Y told the author that his father had hit him repeatedly, but when the author reported this to child protective services in Pori, they refused to investigate. On the same date, the children screamed and cried while repeating that the father would hit them again. On the same date, the father ended the author's home visits with the children, denying her all contact with the children until 30 November 2015.

2.11 On 21 September 2014, the author contacted a family counselling firm to organize a meeting with the father to discuss their interaction and matters relating to the children. Three days later, the firm contacted the father, but he refused to meet.

2.12 In October 2015, the author applied to the Kymenlaakso District Court for enforcement of her visitation rights. The Court ordered a social worker to review the living conditions and situations of both parents. Thereafter, the social worker submitted written conclusions to the Court, recommending that the author's weekend visits with the children resume shortly. The social worker stated that the children were not in danger at the author's home, and that it was also in their best interests to have long weekends and holiday visits with the author. The social worker also recommended family counselling. Thus, on the same date, the author made an appointment for family counselling for 25 January 2016. However, the father refused to attend.

2.13 On 14 December 2015, the police decided not to pursue a criminal investigation against the father because the children were too young to be heard. The adult witnesses (the author's mother, grandmother and partner) were not heard by the police. In addition, the Iitti commune social worker provided erroneous and incomplete statements to the police.

2.14 On 21 December 2015, the author gave birth to a child she had with another individual. Shortly thereafter, they agreed to share custody of the child. On 15 March 2016, the author's then-partner paid the father of Y and Z €200 to cover the travel expenses he would incur in travelling to Pori to allow the author to see the children. On 20 March 2016, the author was able to see her sons for two hours. It was their first visit in six months. The children asked the author when they could return home. Y told her that he wanted to live with her, but that his father would not let him. Y also stated he was afraid of his father and did not want to go with him. On 13 April 2016, the author again proposed to meet the father at a family counselling office in Pori, but the father refused to come.

2.15 On 15 April 2016, the Kymenlaakso District Court dismissed the author's application for enforcement of visitation rights. The Court granted the author supervised visits for two hours every two weeks, for an indefinite period of time. The District Court based its decision on the fact that, by not returning the children to the father at the agreed time on 13 September 2015, the author had violated the visitation agreement confirmed by the District Court on 29 April 2015, and that the conduct was against the children's best interests. The Court considered that by taking the children to a doctor to be examined for signs of assault in 2014 and again in September 2015, despite the lack of objective grounds for her suspicions, the author had demonstrated that she was actively looking for a reason not to return the children to the father. The District Court also ordered the author to pay the father's legal costs, amounting to approximately €12,400, as well as her part of own legal costs (which had partly been funded by State legal aid), in the amount of €3,500. The author appealed the decision of the District Court to the Eastern Finland Court of Appeal.

2.16 On 1 May 2016, the children's father refused to bring the children to a supervised visit with the author in Pori. On 18 May 2016, the author again informed Iitti commune child protective services of her concerns about the father's violent behaviour, but no action was taken.

2.17 On 4 and 5 June 2016, the father refused to bring the children for supervised visits with the author. On 11 June 2016, he refused to allow the children to attend the birthday party of their maternal cousins, stating that supervised visits could only occur in an official meeting place. The author perceived that behaviour as bullying, controlling and humiliating to her and the children. She considered that official meeting places were clinical and did not allow the children to develop or even maintain their relationship with her and other relatives. On 12 June 2016, the father did not bring the children to visits in the official meeting place. On 18 June 2016, the author was able to see the children for two hours. The father limited the children's meeting times with the author to the absolute minimum (12 hours per year), which was contrary to the children's best interests.

2.18 On 18 June 2016, Y told the author that his father "has denied me telling you anything about the things that we told you about before, but they still happen". The children both stated that they were angry and sad because they were unable to come to the author's home, and that when their father was sick, they had to take care of him.

2.19 On 19 June 2016, the father refused to let the children attend the funeral of the author's close relative. On 20 June 2016, the author proposed to the father that they meet at a family counselling centre in Pori to discuss the children. However, the father refused to come.

2.20 On 30 June 2016, the Eastern Finland Court of Appeal denied the author's request for leave to appeal the Kymenlaakso District Court decision concerning enforcement of her visitation rights. The Court did not consider the merits of the appeal. When the communication was submitted, the author had not yet appealed the decision of the Court of Appeal before the Supreme Court; she had until 29 August 2016 to do so. Nevertheless, she claims to have exhausted domestic remedies, because the Supreme Court would not be able to consider the enforcement of her visitation rights.

2.21 On 2 and 3 July 2016, the father did not bring the children to supervised visits at the official meeting place in Pori and, on 6 July 2016, did not appear for an appointment at the family counselling centre in Pori.

2.22 The author maintains that she has not submitted the same matter for consideration to other mechanisms of international investigation or settlement.

### **Complaint**

3.1 The author claims that by granting the custody of the children to the father, removing them from her house to live in an orphanage and then in their father's house, and restricting her access to them, the State party has violated her children's rights under articles 2, 3, 5, 6, 7, 9, 12, 13, 14, 18, 19, 24, 29 and 39 of the Convention.

3.2 With respect to article 2 of the Convention, the children have been punished for expressing the opinion that they do not wish to live with their father. In violation of article 12 of the Convention, the children's opinion that they did not want to live with their father was not considered. In addition, the children have not been heard in any judicial or administrative proceeding affecting them.

3.3 The State party granted custody of the children to their violent father as of 1 May 2014, and did not enforce the author's visitation rights as of 2 May 2014 and on 15 April 2016. In doing so, the State party violated the children's rights under articles 3, 5, 6, 7 and 9 of the Convention, by giving primary consideration to the father's best interests; excluding the author from her children's lives; and violating its obligation to fully ensure the children's survival and development. The State party did not take into account a statement provided by a child psychiatrist dated 19 November 2013, according to which transferring custody of the children to the father was not preferable. The children have been exposed to violent acts by the father over several years, and witnessed criminal activities at his home on 26 October 2014. The author informed the authorities when the children asked to be

protected from their father, but they remain in his custody. The author has been separated from the children at several points, as their father hindered the author's access to the children during two weekends in May 2014 and refused to let them visit her at home, from 2 May 2014 to 1 June 2015 and again as of 14 September 2015.

3.4 By denying the children the possibility to visit with the author during weekends and vacations on 15 April 2016 and 30 June 2016, the State party violated article 9 of the Convention. All the witnesses heard during court proceedings stated that the children faced no danger at the author's home. Article 9 of the Convention was further violated when the children's father denied all phone calls between the author and her children from 2 May 2014 to 1 April 2015, from 24 June 2015 to 30 November 2015 and again as of 15 April 2016. When the author has been able to speak with the children on the phone, the father has controlled and listened to the calls. In addition, the father and the State party have excluded all of the author's relatives from the children's lives as of 2 May 2014. Between 2 May 2014 and 1 June 2015, and as of 14 September 2015, the father and the State have denied all visits and contact between the children and the author's relatives. The father also denied the author's parents the right to attend the author's supervised visits with the children. Moreover, the children have been in day care for nine hours a day, five days a week, without any vacation since 1 October 2014. Their father has thus outsourced care of the children to third parties in the kindergarten, while the author wanted to take care of them herself. In further violation of the children's rights under article 9 of the Convention, the author was forced to return the children to the father against the children's will and without a written decision on the matter.

3.5 In violation of articles 13 (1) and 14 (1) of the Convention, the State party allowed the father to control and restrain the children and their views, and denied the children access to their mother through judicial decisions.

3.6 In violation of article 18 of the Convention, the State party granted custody to a controlling and non-cooperative parent, thereby failing to use its best efforts to ensure that both parents had common responsibilities for raising their children. The author has acted according to her responsibilities and has been willing to discuss matters relating to the children in family counselling from 2013 to 2016. However, the father has refused to discuss those matters in family counselling for three years. He has not attended any of the family counselling meetings that were arranged.

3.7 In violation of articles 19 and 24 of the Convention, the custody and visitation decision has caused the children anger and sadness, due to their inability to see their mother and maternal relatives. The State party's authorities failed to protect the children from harm in their father's care and harmed their well-being by giving primary consideration to the father's best interests. The statement of a child psychiatrist, who stated before the Eastern Finland Court of Appeal that the children would be severely traumatized by separation from their mother, was not taken into account. The criminal investigations into the assaults committed by the father were also flawed.

3.8 In violation of article 29 of the Convention, the State party excluded the author from the children's lives, although she is a well-educated government official who advocates for children's rights. The environment at the father's home and his attitude towards the author does not prepare the children to be respectful towards her, her relatives and her cultural identity, nor does it prepare them for a responsible life in a free and tolerant society. The father refuses to have any conversations with the author about the children. He has been involved with the police and court system since 2011, with regard to different violent situations, thus demonstrating his aggressive personality.

3.9 In violation of article 30, the children have been denied access to their Finnish and Swedish-speaking maternal grandfather from 2 May 2014 to 15 July 2015 and again since 14 September 2015. As a result, the children have lost their ability to speak and understand Swedish.

3.10 In violation of article 39, the children were exposed to repeated violence by their father, including violence targeting the author in addition to the violent incident on 26 October 2014. The father repeatedly refused to discuss matters relating to the children with the author and has been mentally controlling and restraining the children for two years.

Their recovery from that stressful and harmful period should take place at the author's home in a healthy environment.

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

4.1 In its observations dated 12 January 2017, the State party provided additional factual background to the communication. By law, the author became the children's sole custodian upon their birth. On 27 April 2012, the author moved with the children to Pori, approximately 300 kilometres from Iitti, after separating from the children's father. While the author claims to have separated from the father due to his violent behaviour and alcohol consumption, the father claims that he asked the author to move out because of her behaviour. It was only on 19 October 2013, one-and-a-half years after the separation, that the children were able to see their father again.

4.2 Both parents have filed numerous child welfare reports in both Pori and Iitti. On 15 June 2012, the father filed for custody and access to the children with the Kymenlaakso District Court. On 8 January 2013, the Court granted interim measures to allow the father to visit the children for three hours at a time, twice a month. In accordance with established practice, the visits were to be supervised until the supervisors considered it unnecessary. However, the visits never occurred, and the father drove to Pori 17 times in vain, as the author never brought the children to the meeting place, alleging that they were ill. Thus, on 7 February 2013, the father applied to Satakunta District Court to enforce his right to have access to the children and, on 26 April 2013, the Court required the author, under penalty of a fine, to permit visits between the father and the children. The author's appeal to the same court was denied, on the ground that it was in the children's best interest to meet their father, as it was important for their growth and development. On 26 April 2013, the author appealed to the Vaasa Court of Appeal for suspension of the enforcement of the father's visitation rights. The appeal was denied, taking into account that on only one occasion the author had had a reason for cancelling the supervised visit. Despite a decision dated 5 June 2013 ordering the author to pay a fine for not complying with the visits, the father was still unable to meet his children. For example, on 11 May 2013, the author did not appear for a scheduled visit and informed the father that she intended to leave the country. On 10 July 2013, the Kymenlaakso District Court denied the author's appeal of the interim measure decision, reasoning that the children had not seen their father since 27 April 2012, and that it was in their best interest to meet him often. The Court also considered that, because the children were three-and-a-half months old when they last saw the father, they could not have a strong fear of him, as the author claimed.

4.3 On 19 October 2013, the children saw their father for the first time in over a year. The author had not given them presents sent by their father. According to a report by child welfare services dated 11 December 2013, the father interacted well with the children during his supervised visits, was calm throughout the meetings, and took care of the children's well-being and cared for them. On 26 March 2013, having received child welfare notifications from the father and his relatives, the child welfare authorities of the Pori social and family services initiated a needs assessment for the author's children. The assessment included meetings with both parents and the children, as well as a psychologist's examination of the parents' parenting skills. The social workers met the mother together with the children and visited the father in his home to examine his ability to take care of the children. The assessment was completed on 24 February 2014. While the children were found to be energetic, the authorities decided to continue a client relationship with the family at least as long as the parents' relationship was quarrelsome, in order to protect the children.

4.4 On 4 December 2013, the Kymenlaakso District Court awarded sole custody of the children to the father, as of 1 May 2014. Until 30 April 2014, the parents were to share joint custody, and the father would have unsupervised visitation rights until the children moved in with him in Iitti. On 20 December 2013, the author appealed the Court's decision and requested that the father's visits with the children be supervised. In his response, the father requested supervision of the author's visits with the children. On 23 January 2014, the father applied to Satakunta District Court for enforcement of the custody decision. On 1 April 2014, the Court granted his application.

4.5 The emergency placement of the children ended on 2 May 2014. On 12 September 2014, Turku Administrative Court denied the author's appeals of the decisions regarding emergency placement and visitation rights. On 25 August 2015, the Supreme Administrative Court denied the author's further appeal. In accordance with the custody decision, on 2 May 2014, the children moved to Iitti to live with the father. The author had supervised visits with the children between 15 June and 14 September 2014. In 2014, the authorities received 11 child welfare notifications about the children, coming from the author, her mother, her doctor with whom she had discussed the children's situation, and the police. The notifications were reviewed by a social worker of the municipality of Iitti.

4.6 On 28 January 2015, the author filed a child welfare notification in Iitti, stating that the father had failed to bring the children to supervised visits on five occasions over a period of seven weeks, and had hindered their communication with the author in other ways. A social worker asked the police to investigate the matter and prepared a report on both parents' parenting abilities for the Kymenlaakso District Court. On 29 April 2015, the same Court confirmed the visitation agreement that the parents had reached in the preparatory court session. According to the agreement, the visits with the author would be supervised until the beginning of July 2015. After that point, they would take place without supervision. From the end of July 2015, the visits would extend from Thursday to Sunday.

4.7 While the children were with their mother from 10 to 13 September 2015, the author took one of the children to the doctor and alleged that he had been struck by the father. As a result, the doctor reported the allegations to Pori Social Services, which, along with the Pori police, investigated the matter. During a home visit on 24 September 2015, Pori Social Services observed that the children had an affectionate and harmonious relationship with their father.

4.8 Fifteen child welfare reports were filed after the children moved in with their father; the reports were investigated by the Iitti child welfare service, the family counselling centre, emergency social services and health services. The situation was also assessed through home visits by the police and the Kouvola family support centre, and by supervisors who arranged the supervised visits. Child welfare social counsellors also visited the father's home. They saw no indication that the children were subjected to any abuse or mistreatment. The children appeared content, cheerful, energetic and well balanced, and enjoyed a warm and secure relationship with their father. The staff had no concern for their development. A report received from the nursery school the children attend in Iitti indicates that they are energetic and playful and have developmentally progressed during schooling; their speech has improved; they have made progress in toilet training; they interact warmly with their father; and there has been no sign of possible assault. A separate report from social and health services in Iitti indicates that the children have kept all of their planned appointments at the clinic, initially accompanied by both parents and later by their father alone. The health records and staff member recollections contain no indications of any significant abnormalities in the children's health, development or welfare. Noting the difficult relationship between the parents, clinic staff attempted to guide them to resources including family counselling.

4.9 The State party considers that the communication is inadmissible *ratione materiae* under article 7 (c) of the Optional Protocol, because the author requests re-evaluation of the facts on which the domestic decisions were based, and it is not the role of the Committee to act as a fourth instance to domestic courts.

4.10 The communication is inadmissible under article 7 (d) of the Optional Protocol for two reasons. The author lodged an application concerning the same matter before the European Court of Human Rights, which declared the application inadmissible in May 2015. Moreover, the author submitted a communication before the Human Rights Committee concerning the same matter, which is still pending. The fact that the author has raised other substantive rights before the Committee on the Rights of the Child does not alter the fact that the communications concern the same author and the same facts, raising the possibility that the communication represents an abuse of submission. The only part of the communication that was not presented to the Human Rights Committee is the portion relating to the most recent proceedings, initiated in October 2015, concerning enforcement of the author's visitation rights.

4.11 The communication may be inadmissible under article 5 of the Optional Protocol and rule 13 of the Committee's rules of procedure, according to which communications may only be submitted with the express consent of the alleged victim(s). It is unclear whether the children, just 5 years of age, can provide objective consent. They are in the custody of their father, who is their legal representative, and the author has not justified acting on their behalf. It is doubtful that the communication is in the children's best interests, and there may be a conflict of interest between the author and the children. The Committee should examine the possibility carefully to ensure that the children are not being manipulated. The core of the communication is that the author is dissatisfied with the outcome of domestic proceedings. However, the continuation of proceedings before the Committee burdens the entire family, which is not in the children's best interests.

4.12 The communication is inadmissible under article 7 (e) of the Optional Protocol, because the author has not exhausted several available domestic remedies. On 2 October 2015, the author filed a request before the Kymenlaakso District Court to impose a conditional fine on the father to ensure that the author's visits were arranged according to the 2015 agreement. On 15 April 2016, the Court denied the author's request. On 29 November 2016, the Supreme Court granted the author leave to appeal the decision of 30 June 2016 of the Eastern Finland Court of Appeal, which had confirmed the decision of the Kymenlaakso District Court. The proceedings are ongoing and have not been unduly prolonged. Moreover, the author has not been denied access to the children, as she claims. According to the District Court decision, the author has the right to supervised visits with the children. Both the District Court and the Court of Appeal held oral hearings in which they considered the testimony of numerous witnesses and a substantial amount of written evidence. The District Court also considered relevant assessments and reports from social welfare authorities. In addition, the author has not availed herself of her right of secondary prosecution in response to the decision, made by the Salpausselkä District Prosecutor on 4 June 2016, not to press charges against the children's father. Furthermore, the author has not, as she could have, filed a claim for damages or requested "the relevant civil servant to be sentenced to punishment" under section 118 of the Constitution. Moreover, she did not file a complaint under section 23 of the Social Services Client Act to contest her treatment by the social services authorities. Nor did she file a complaint with the regional state administrative agency or the Parliamentary Ombudsman concerning improper action by government authorities.

4.13 Moreover, the author did not exhaust domestic remedies with respect to her claims under articles 2, 13, 14, 29, 30 and 39 of the Convention, because she did not invoke those claims before the domestic authorities.

4.14 The communication is also inadmissible under article 7 (g) of the Optional Protocol, because the majority of events at issue occurred before 12 February 2016, the date on which the Protocol entered into force for the State party. Under the jurisprudence of the European Court of Human Rights, an instantaneous act such as granting custody does not produce a continuing violation of rights for purposes of *ratione temporis* competence.<sup>1</sup>

4.15 The communication is inadmissible under article 7 (f) of the Optional Protocol because it is manifestly ill-founded. Concerning the author's allegations that the father has exhibited violent behaviour, the State party asserts that long before the children were born, the father was involved in various incidents, due to his occupation as a security guard, that led to police investigations. No charges were ever brought against him. The author claims that domestic proceedings were flawed but does not describe the alleged flaws. In response to the alleged assaults on the author by the father in 2011 and 2012, a criminal investigation was conducted in which the author, her mother and the children's father were all heard. The decision to grant sole custody to the father safeguarded the children's right to maintain relationships with both parents on a regular basis. All authorities involved in the custody and visitation decisions have made every effort to give due consideration to the children's right to maintain relations with both parents, while taking into account the rights and obligations of the parents. The actions of the authorities have been appropriate and have

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<sup>1</sup> The State party cites European Court of Human Rights, *Blečić v. Croatia*, application No. 59532/00, judgment of 8 March 2006, para. 86.



given protection to the children and to their family life. The matter was also extensively considered by domestic courts, which provided thorough reasoning for their decisions.<sup>2</sup>

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

5.1 The author provided comments dated 16 February 2017 on the State party's observations. The author asserts that the father continues to hit the children, injuring them both psychologically and physically, and that the harm has been witnessed by the visit supervisors, who have not reported any concerns to the welfare authorities. The children have exhibited many behavioural and physical symptoms of abuse, including headaches, abdominal pain, teeth grinding, defensive injuries on their forearms, human bite marks, burn marks and facial injuries. The author claims that, since 2015, the father has cancelled 22 supervised visits and has not complied with the court order to reschedule those visits.

5.2 The author contests each of the State party's arguments concerning the admissibility of the communication, including regarding exhaustion of domestic remedies. The author does not have a secondary right of prosecution, because the children, not the author, are the injured party in the criminal investigation concerning the assault of the children by the father. Since the father is the children's sole custodian, he alone may represent them in domestic proceedings.

5.3 The restrictions on the author's visitation rights constitute an impermissible restriction on her family life, with no objective or reasonable justification. The decisions of the domestic authorities have been arbitrary and constitute a denial of justice, because due diligence was not performed to ensure the children would be safe in the custody of their father, who has harmed them; and the authorities did not ensure that the children, who are at a vulnerable age, have extensive contact with both parents. The restrictions on the author's visitation rights are severe and are based on minor causes, such as returning the children to the father three hours late. Moreover, the Enforcement Proceedings Mediator testified in court that there was no reason to supervise the visits of the children with the author, and that it was in the children's best interest to have weekend and vacation visits with her. While reiterating that the present communication does not concern the issues of custody of the children or the emergency placement, the author responds to the State party's assertions on those issues, and maintains that the Iitti child welfare authorities did not properly assess the threat of violence to the children in the father's home and deleted from their registry relevant information and documents the author provided to them in June 2014. In May 2014, the same authorities prohibited the author from photographing and documenting the children's injuries and from taking the children to be examined by a doctor when they were injured.

5.4 The staff of the children's nursery school in Iitti indicated in their report to the police that they impose an old-fashioned "freezing penalty" on the children when they cannot control their feelings or behaviour. That penalty is considered by many psychologists to be detrimental to children's stable development. A school using such methods is therefore not well placed to assess possible injuries to the children.

5.5 The children were in nursery school for one-and-a-half years in 2014 and 2015, without vacation, because the father did not have leave from work, and did not permit the children to spend their summer vacation of five weeks at the author's home. Thus, while the children could be raised by their mother, they are being raised by the nursery school because the father's priority is his work.

5.6 The author contests the State party's assertions that a social worker assessed each parents' parenting abilities and prepared a report on the subject for the Kymenlaakso District Court. Such a shadow report would have been unlawful, because the court did not request it and the parties did not consent to it.

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<sup>2</sup> The State party expanded at significant length on the decisions made by the domestic authorities and courts, and their justifications. At the same time, it requested respect for the confidentiality of the information in the communication.

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

6.1 In observations dated 12 May 2017, the State party reiterated its observations on admissibility, submitted that the communication was without merit and added to the factual background of the communication. On 21 February 2014, a multidisciplinary working group found that the three supervised meetings between the children and the father had gone well. Other agreed meetings never took place owing to the author's unwillingness or inability to attend. On 1 April 2014, the Court granted the father's application, ordering that, as requested, an enforcement authority would collect the children from the author for their visits with the father before their move to Iitti. The Court stated in its decision that the author had asserted she would not, either voluntarily or under penalty of fine, agree to the meetings ordered by the District Court. The Court also stated that the author had informed it that she would do her utmost to make sure that the meetings would not take place. Consequently, a serious concern arose among the social workers that the author would try to prevent the father from collecting the children in a manner that would endanger their safety.

6.2 Following the issuance of the custody decision, the mother insisted that the father's visits with the children be supervised, contrary to the Court's decision. As the father did not agree, the author repeatedly refused to bring the children to the meetings and cancelled the appointments. After receiving several child welfare reports, the Pori child welfare services met with the author on 10 April 2014. During that meeting, she stated that she would not hand the children over to the father and that the children would go with him "over [her] dead body". As the author did not state how she would prevent the children from leaving, the Pori child welfare services decided on the same date to urgently place the children in a child care institution as of the same date.

6.3 According to a child welfare report dated 3 December 2014, the author asked the supervisor of a meeting to observe bruises and scratches on the children. The bruises were small and were situated mostly on the children's faces and backs. According to the employees, for children that age such bruises could have been caused by playing. During another meeting, the supervisors had to prohibit the author from photographing the children without their clothes. The author had called the police and the meeting was interrupted.

**Author's further comments**

7.1 In comments dated 12 July 2017, the author contested in detail the State party's assertion that she had not invoked articles 2, 3, 14, 29, 30 and 39 of the Convention. The author maintains that the imposition of the freezing penalty by the nursery staff constitutes a violation of article 29 of the Convention. She also maintains that the doctors who examined the children on 13 September and 14 December 2015 "recommended safe shelter or emergency placement for the children and reported to the police injuries caused possibly by an assault". The author reiterates that Y was severely injured, with a fractured thigh bone, and that the State party's authorities have not taken into consideration the children's views and opinions throughout the proceedings.

7.2 In comments dated 27 November 2017, the author informed the Committee that, on 17 November 2017, the author and the father had entered into an agreement before the Eastern Finland Court of Appeal for peaceful settlement of the matter concerning the enforcement of the author's visitation rights. According to the agreement, beginning on 19 November 2017, the children have unsupervised visits at the author's home every other weekend. The author emphasizes that the visitation agreement had already been confirmed by the Kymenlaakso District Court on 29 April 2015 but was not enforced until two years later.

7.3 In comments dated 5 February 2018, the author stated that the children continued to tell her that their father hit them and was often angry at them. On 21 September 2018, the author informed the Committee that, on 20 September 2018, the Supreme Court had rejected her application for leave to appeal the decision of 30 June 2016 of the Eastern Finland Court of Appeal concerning enforcement of her visitation rights. Accordingly, all domestic remedies had been exhausted.

### State party's further observations

8.1 In further observations dated 27 April and 1 November 2018, the State party reiterated its position. It considers that the author alleges many facts that are irrelevant and cannot be verified. The children do not have victim status because, on 17 November 2017, the author and the father entered into an agreement concerning enforcement of the author's visitation rights, which is at the core of the present communication. At the request of the parties, the agreement was confirmed by the Eastern Finland Court of Appeal on 20 November 2017. According to the Court, the agreement was not contrary to law or clearly unreasonable, did not violate the rights of a third party and corresponded to the children's best interests. The decision was not appealed and has become final. The communication is also inadmissible because it is manifestly ill-founded because the author is requesting the Committee to act as a fourth instance to domestic courts.

8.2 On 20 March 2016, the author filed a criminal police report for suspected violence against her children. Information was requested from the children's day-care centre and welfare authorities who had observed meetings with the author and the children; none of them reported cause for concern. The father denied the allegations of violence. Due to the children's young age, the working group of forensic psychiatrists at Tampere University was requested to assess the children's capacity to be interviewed; its report of 15 June 2017 indicated that interviewing the children would not be in their best interests because neutral parties had not expressed concern over the children's situation and because there were no indications of assault or abuse. The working group noted that none of the individuals who had provided statements, including a nurse, a teacher, a police officer and welfare authorities, had voiced any concerns about the children's welfare and none of them had observed any signs of assault. The working group noted that, according to the records, there were inconsistencies between the author's reports and the record entries concerning the supervised meetings with regard to who started talking about the father's violence. The working group also maintained that the possibility of obtaining reliable information from the children in a forensic psychological interview depended, among other things, on the extent to which the children had been exposed to external views regarding the suspected assault. Young children were not necessarily capable of distinguishing between the sources of their memories, in other words, whether the memory was based on a real experience or on an adult's perception of the incident, for example. In the current case, there was a long history of similar suspected offences, and the children had been exposed to the matter to such an extent that it would not be possible to assess the reliability of their accounts concerning the suspected assault. The prolonged custody dispute between the parents made it difficult to obtain a reliable account from the children.

8.3 Since 1 December 2016, the child welfare authorities in Iitti have received five child welfare notifications regarding the children from the author, and one notification from her current spouse, concerning suspicions of violence by the father and the author's difficulties in meeting the children. The Government notes that the social welfare authorities investigated the notifications by interviewing the father at their office on 29 May 2017; contacting the Child Psychiatric Department of Päijät-Häme Central Hospital and the Child Psychiatric Department of Tampere University Hospital; calling the father and the author in July 2017 to discuss the matter; and visiting the children's home on 27 July 2017 to meet them and the father. According to the records of the social workers, the children were calm, happy, open and well-behaved 5-year-olds. They chatted with their father and at times sat on his lap. They also said their father consoles them and they felt they could tell him if they were scared of something. The social welfare authorities did not observe any circumstances that would have required them to start investigations into the suspected assault. Moreover, in her child welfare notifications, the author referred to earlier incidents that had already been investigated appropriately by the authorities. The suspected violence by the father had already been investigated by the police. In particular, the author's allegation concerning Y's thigh bone fracture was revealed to have been caused by a fall on a ski slope in March 2017.

8.4 Concerning the author's allegation that the children received no support after being exposed to violence on 26 October 2014, the State party emphasizes that the following actions were taken: (a) the Southeast Finland Police Department requested executive assistance from the forensic psychiatrist working group on 23 January 2017, following the

request for an investigation it had received on 7 December 2016; (b) the working group filed a child welfare notification to inform social workers of an email it had received from the author, who had expressed concern over the father's violence against the children; (c) the working group referred the children to the Child Psychiatric Department of Päijät-Häme Central Hospital; and (d) the Department contacted the father on 11 July 2017 and advised him to obtain a referral for the children to a child psychiatrist. The Department's records indicate that the father saw no need for the children to see a child psychiatrist, and that neither the father nor the day-care centre staff were concerned over the children's well-being.

8.5 The children no longer have victim status, and the author's arguments that domestic remedies are ineffective have become irrelevant. The Supreme Court rendered its decision in the domestic proceedings on 11 July 2017. It did not address the merits of the matter but overturned the decision of the Eastern Finland Court of Appeal to the extent that it had denied the author's application for leave for continued consideration. The matter was referred back to the Court of Appeal. In addition, on 17 November 2017, the author and the father reached an agreement on visitation rights at a preparatory meeting in the Court of Appeal. The agreement was confirmed by a final decision of the Court of Appeal on 20 November 2017.

8.6 In its decision dated 17 January 2018, the Eastern Finland Court of Appeal rendered a decision rejecting the author's claim for compensation for the excessive length of the proceedings. Although the author's application for leave to appeal that decision is still pending, her claims concerning the length and cost of the proceedings are not being examined by the Committee.

8.7 Concerning the exhaustion of domestic remedies, the decision of the District Court dated 15 April 2016 does not mention a claim under article 30 of the Convention. The rationale for the exhaustion rule is to afford the national authorities the opportunity to prevent or put right alleged violations of the Convention. The alleged victims have not exhausted available domestic remedies with respect to the author's new claims concerning alleged reports to the police or the child welfare authorities. The author's allegations concerning, for example, "a freezing penalty" were raised for the first time before the Committee in the author's letter of 16 July 2017. The claim relating to that penalty is also inadmissible *ratione temporis*.

8.8 Concerning the merits, to assess the well-being, development and safety of the children, a report issued by the manager and staff of the children's day-care centre states that the children's growth and development is in line with what is normal at their age. The staff report that the children's level of independence, their motor and social skills and linguistic and mental development are also in line with what is normal at their age. The staff have observed that the children have some self-regulation difficulties, which are demonstrated as impulsiveness and difficulty concentrating in daily activities. They like to play action-packed games and sometimes they like to defy the rules of the day-care centre.

8.9 The day-care centre staff have not observed any indications of lack of security or well-being in the children's living conditions that would have raised concern. The early education and care partnership with the father has always been open and confidential. The day-care centre staff have been aware of the social welfare authorities' involvement in the children's situation, in addition to the fact that all parties working with the children are obliged to notify the social welfare authorities of any suspicions of abuse. Moreover, the day-care centre staff have been aware of the previous assault suspicions. As to the author's statements concerning giving due weight to the children's views in accordance with their age and maturity, the State party recalls that the forensic psychiatry working group of Tampere University Hospital reviewed the ability of the children to be interviewed in 2017. They concluded that the children were not able to be interviewed due to their age and the prolonged nature of the custody dispute and that organizing an interview with the children would not be in their best interests. Moreover, as described in detail by the State party, the children's situation has been monitored in several other ways, as well.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

9.2 The Committee notes the State party's position that the communication is inadmissible under article 7 (d) of the Optional Protocol because the same matter involving the same facts is being examined by the Human Rights Committee, and has been examined by the European Court of Human Rights, which declared the author's application inadmissible in May 2015. The Committee also notes that, according to the author's statement, the matters raised before the Human Rights Committee relate to the custody of the children and restrictions on her visitation rights in 2014 and not the proceedings surrounding enforcement of her visitation rights as of 13 September 2015. The Committee therefore considers that it is not, in principle, precluded by article 7 (d) of the Optional Protocol from examining the author's claims relating to the proceedings, initiated before the Kymenlaakso District Court in October 2015, regarding enforcement of her visitation rights under the agreement that she had reached with the father and that had been confirmed by the Court on 29 April 2015. Conversely, the Committee is precluded by article 7 (d) of the Optional Protocol from considering matters that are being examined by the Human Rights Committee, including the custody decision, emergency placement decision and visitation rights decision of 2014, and the author's claims relating to the children's place of residence, right to security and family life. The Committee notes that the single-judge decision issued by the European Court of Human Rights does not specify the basis for the finding of inadmissibility. Consequently, the Committee considers that the decision does not establish that the European Court examined the same matter.

9.3 With regard to the author's claims of alleged violations of her own rights, the Committee considers that the Convention protects the rights of children and not the rights of adults. The Committee therefore finds that the author's claims on her own behalf are incompatible with the provisions of the Convention and declares them inadmissible in accordance with article 7 (c) of the Optional Protocol.<sup>3</sup>

9.4 The Committee notes the State party's position that the communication is inadmissible under article 5 (2) of the Optional Protocol and rule 13 of the rules of procedure under the Optional Protocol because the alleged victims, due to their young age, are unable to consent to the submission of the communication and the author is not their custodial parent or legal representative. However, 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. Under such circumstances, a non-custodial parent should still be considered a legal parent and can represent his or her children before the Committee, unless it can be determined that he or she is not acting in the children's best interests. In the present case, the Committee observes that, due to their young age at the time of submission, the children were not capable of expressing their own views about submitting a communication or consenting to their representation before the Committee. The Committee notes the State party's argument that the communication is not in the children's best interests. However, the Committee considers that the material before it does not indicate that the submission of the communication by their mother is against their best interests. The Committee therefore concludes that there is no obstacle to the admissibility of the communication under article 5 (2) of the Optional Protocol.

9.5 The Committee notes the State party's argument that the communication is inadmissible *ratione temporis* under article 7 (g) of the Optional Protocol. The Committee observes that the Protocol entered into force for the State party on 12 February 2016 and that, although the author initiated proceedings concerning her visitation rights in October 2015, the initial decision on the matter was made by the Kymenlaakso District Court on 15

<sup>3</sup> A.A.A. v. Spain (CRC/C/73/D/2/2015), para. 4.4.

April 2016. The Committee therefore considers that it is not precluded by article 7 (g) of the Optional Protocol from examining the author's claims relating to enforcement of her visitation rights as of 12 February 2016.

9.6 The Committee also notes the State party's position that the communication is inadmissible under article 5 (1) of the Optional Protocol because the children no longer have victim status since, on 17 November 2017, the author and the father entered into a now final agreement concerning enforcement of the author's visitation rights. The Committee refers to its conclusions in paragraphs 9.2 and 9.5 above, and considers that it has the competence to examine the author's allegations pertaining to the enforcement of her visitation rights during the period from 12 February 2016 until 17 November 2017.

9.7 Finally, the Committee notes the State party's position that the communication is inadmissible under article 7 (f) of the Optional Protocol because it is manifestly ill-founded. The Committee notes that, according to the agreement confirmed by the Kymenlaakso District Court on 29 April 2015, the author was to have supervised visits with the children until July 2015, and would have unsupervised visits with them from Thursday to Sunday as of the end of July 2015. In its decision of 15 April 2016, the same Court determined that, because the author had violated on 13 September 2015 a provision of the visitation rights agreement in question, her visits with the children had to be supervised indefinitely. The Committee notes the author's assertion that returning the children to the father three hours late on 13 September 2015 represented a minor violation of the agreement and did not justify the Court's order to revert to supervised visits. The Committee also notes that, according to the author, the Enforcement Proceedings Mediator recommended that the author have unsupervised visits with the children. However, the Committee further notes that the Court based its decision on the assertions that the author had taken the children to a doctor to be examined for signs of assault in 2014 and again on 13 September 2015, despite the lack of objective grounds for suspicion, and had therefore demonstrated that she was actively seeking a reason not to return the children to the father after a visit. In that regard, the Committee notes that according to the State party the author had repeatedly expressed in 2014 that she would not allow the father to take custody of the children and had caused social welfare authorities to become concerned that she might endanger their welfare in preventing them from being collected by their father. The Committee also notes the State party's information that the domestic authorities have examined the author's numerous claims that the children have been assaulted and otherwise harmed by the father, and that the claims have been investigated by the police and social services, including through home visits, who concluded that the children bore no signs of physical or other abuse and appeared to be content and well-adjusted in their father's presence. The report from the nursery school also indicated that the children were playful and attested to their developmental progress and their warm interaction with their father, with no sign of possible assault. Regarding the author's assertion that a medical report issued on 13 September 2015 does not rule out the possibility that injuries to the one of the children were caused by assault, the Committee notes that the report in question noted that the injuries and bruises were in areas that were typically caused by accidents.

9.8 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.<sup>5</sup> In the present case, the Committee considers that, while the author contests the conclusions reached by the domestic courts as to the children's contact with her, she has not demonstrated that courts' assessment of the facts and evidence was clearly arbitrary or otherwise amounted to a denial of justice. Therefore, the Committee considers that the communication, insofar as it pertains to the author's claims concerning enforcement of her children's contact with her

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<sup>4</sup> *A.A.A. v. Spain*, para. 4.2; *J.A.B.S. v. Costa Rica* (CRC/C/74/D/5/2016), para. 4.3; and *Z.Y. and J.Y. v. Denmark* (CRC/C/78/D/7/2016), para. 8.8.

<sup>5</sup> *Y.B. and N.S. v. Belgium* (CRC/C/79/D/12/2017), para. 8.4.

pursuant to the aforementioned proceedings, is insufficiently substantiated and is therefore inadmissible under article 7 (f) of the Optional Protocol.

9.9 The Committee therefore considers that this part of the communication is also insufficiently substantiated and declares it inadmissible under article 7 (f) of the Optional Protocol.

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

(a) That the communication is inadmissible under articles 7 (c), 7 (d) and 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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