



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. 78/2019* **

<i>Communication submitted by:</i>	M. E. (represented by counsel, Marta Sánchez Briñas Otte)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	12 March 2019 (initial submission)
<i>Subject matter:</i>	Procedure for determining the age of an unaccompanied minor
<i>Substantive issues:</i>	Best interests of the child; right to identity, right to be heard; right to a guardian, right to development; right to special protection and assistance from the State
<i>Articles of the Convention:</i>	3; 8; 12; 18 (2); 20; 27 and 29

1. The author of the communication is M. E., a Moroccan national, aged 17 years at the time of submission of the communication. He claims that the State party has violated his rights under article 3, read in conjunction with articles 18 (2), and 20 (1); and articles 8; 12; 20; 27 and 29 of the Convention. The Optional Protocol entered into force for the State party on 14 April 2014.

2. On 17 January 2019, the author was intercepted near Algeciras while attempting to enter Spain in a migrant boat. He had no papers and was taken to Algeciras Hospital, where an X-ray of his left hand was taken. The examination indicated that he was over 18 years of age. The author states that the examination was carried out with no lawyer present. On 18 January 2019, the Government Subdelegation of Cadiz issued an expulsion order against him based on those findings. The following day, 19 January 2019, Judge No. 4 of Algeciras ordered the author to be interned in the Madrid Detention Centre for Foreign Nationals, in order to ensure his expulsion. On 30 January 2019, the author requested the suspension of his expulsion, stating that he was a minor, but did not receive a response before submitting his communication to the Committee. On an unknown date, the author submitted a document to the director of the Detention Centre for Foreign Nationals, stating that he was a minor. On

* Adopted by the Committee at its eighty-ninth session (31 January–11 February 2022).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffé, Soppio Kiladze, Gehad Madi, Benyam Dawit Mezmur, Clarence Nelson, Otani Mikiko, Luis Ernesto Pedernera Reyna, Zara Ratou, José Ángel Rodríguez Reyes, Ann Marie Skelton, Velina Todorova and Benoit Van Keirsbilck.



12 February 2019, another test was carried out to determine his age and the results showed that the author was over 18 years old. The author subsequently received a birth certificate and his Moroccan family record book. On an unknown date (after 8 February 2019), the author submitted both documents to the director of the detention centre, but received no reply.

3. In accordance with article 6 of the Optional Protocol, on 19 March 2019 the working group on communications, acting on behalf of the Committee, requested the State party to take interim measures – namely, to suspend the execution of the author’s deportation order pending the Committee’s consideration of his case – and to transfer him to a child protection facility.

4. On 22 March 2019, the author’s lawyer sent further information to the effect that on 12 March 2019 the author had been released from the detention centre and transferred to a child protection centre.

5. On 20 August 2019, the State party submitted a request to close the case, explaining that on 2 April 2019, the Prosecutor’s Office had issued an age determination ruling officially recognizing the author as a minor and ordering his transfer to a juvenile protection centre (where he had already been since March).

6. On 15 December 2020, the author’s counsel challenged the State party’s request to close the case, on the grounds that he had been detained for 53 days in the Detention Centre for Foreign Nationals, a facility unsuitable for children, and had not been transferred until he presented his birth certificate and family record book.

7. Meeting on 8 February 2022, the Committee notes that the author has been recognized as a minor and placed under the protection of the authorities. Notwithstanding the fact that this does not in itself constitute full reparation for the alleged violations of the Convention, and without endorsing the age determination procedure followed by the State party, the Committee considers that the recognition of the author as a minor renders communication No. 78/2019 moot and decides to discontinue consideration of the case, in accordance with rule 26 of its rules of procedure relating to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.
