



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 in respect of communication No. 69/2018* **

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| <i>Communication submitted by:</i> | H.B. (represented by counsel, Vanessa Hernández Delgado) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Spain |
| <i>Date of communication:</i> | 28 December 2018 (initial submission) |
| <i>Subject matter:</i> | Determination of the age of an unaccompanied minor |
| <i>Substantive issues:</i> | Best interests of the child, right to an 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, 18 (2), 20, 27 and 29 |

1. The author of the communication is H.B., a Moroccan national aged 15 at the time of submission of the communication. He claims that the State party has violated his rights under articles 3, 8, 18 (2), 20, 27 and 29 of the Convention. He is represented by counsel. The Optional Protocol entered into force for the State party on 14 April 2014.

2. On 8 October 2018, the Civil Guard of Arrecife detained the author in the vicinity of the beach at Famara, Lanzarote, after he reached the territory of the State party on a small boat. Although he was not carrying any documentation, he claimed to be a minor. On the same day, he was transferred to a shelter called La Santa, in Lanzarote.

3. On 8 November 2018, the author was notified of a decree issued by the Las Palmas Provincial Prosecutor's Office declaring him to be an adult on the basis of medical tests, no evidence of which was recorded in his case file. The author claims not to have been notified of the results of these tests. On 9 November 2018, the author was notified of an order for his removal issued by the Government Subdelegate at the Island Directorate of Lanzarote. On 11 November 2018, Court of Investigation No. 3 in Arrecife ordered that the author be placed

* Adopted by the Committee at its eighty-seventh session (17 May–4 June 2021).

** The following members of the Committee participated in the consideration of the communication: Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffé, Sopia Kiladze, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, Zara Ratou, Aïssatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Benoît Van Keirsbilck.



in the Hoya Fría migrant holding centre in Santa Cruz de Tenerife, to which he was admitted the following day. In his statement to the judge, the author again stated that he was a minor.

4. On 5 December 2018, volunteers from Médecins du Monde told the author's lawyer that, during one of their visits, he had told them that he was a minor and had a birth certificate to prove it. The author's lawyer requested the minor's case file, which did not contain either the prosecutor's decree or the medical reports. The author's lawyer also consulted the file from the Hoya Fría migrant holding centre, but it did not contain the prosecutor's decree either. In this file she found a letter from the director of the migrant holding centre to Court No. 3 in Arrecife, in which he noted that the author had a birth certificate from his country of origin giving 6 January 2003 as his date of birth. However, the court considered that, in view of the results of the medical tests, the author was of age.

5. The author alleges that an X-ray of his wrist and a panoramic dental X-ray were performed without his consent and without the presence of an interpreter, that he was not assisted by a specialist in the age determination process and that he did not have a lawyer present during the procedure.

6. Pursuant to article 6 of the Optional Protocol, on 31 December 2018 the working group on communications, acting on behalf of the Committee, decided to register the communication and to grant interim measures, namely, a stay in the execution of the order for the author's deportation pending consideration of his case by the Committee, and his transfer to a child protection centre.

7. On 29 March 2019, the State party submitted its observations on the admissibility and merits of the communication. On 6 September 2019, the author's lawyer submitted comments to the State party's observations on admissibility and the merits.

8. On 11 February 2020, the author's lawyer reported that the author had managed to obtain his Moroccan passport, thus confirming that he was a minor, and that he had been transferred to a child protection centre. On 6 May 2020, the State party confirmed this information and requested that the communication be discontinued. On 27 September 2020, the author's lawyer objected to the discontinuance of the communication, arguing that the State party had unfairly treated the author as an adult for more than a year before he was able to get his passport.

9. Meeting on 31 May 2021, the Committee, having considered the additional information submitted by the author's lawyer and the State party's request for discontinuance, noted that the author had already been recognized as a minor and entrusted to the child protection services. Although this fact does not in itself amount to full reparation for the alleged violations of the Convention, the Committee considered that the recognition of the author's status as a minor and the care he received from the child protection services left the present communication devoid of purpose, and decided to discontinue consideration of communication No. 69/2018, in accordance with rule 26 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.
