



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. 20/2017*, **

<i>Communication submitted by:</i>	M.S.B. (represented by the non-governmental organization Fundación Raíces)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	11 May 2017 (initial submission)
<i>Subject matter:</i>	Age assessment procedure in respect 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 special protection and assistance from the State
<i>Articles of the Convention:</i>	3, 8, 12, 18 (1) and 20 (1)

1. The author of the communication is M.S.B., a national of Guinea born on 5 May 2001. He claims that the State party has violated his rights under articles 3, 8, 12, 18 (1) and 20 (1) of the Convention. The Optional Protocol entered into force for the State party on 14 April 2014.

2. In September 2016, the author arrived in Melilla, Spain, as an unaccompanied minor. He was taken to a temporary centre for adult migrants. On 31 March 2017, the non-governmental organization Fundación Raíces, which represents the author, brought him to the police (special children's unit) to request his protection as a child. The author submitted his original birth certificate, consular identity card, certificate of registration with the Consulate of Guinea in Madrid and consular certificate attesting to the fact that his passport was being processed. On 4 May 2017, the Office of the Prosecutor for Minors initiated an internal procedure to assess the author's age. The author's request to speak with and be accompanied by his representatives during the procedure was denied. Although the author initially refused to undergo medical tests to assess his age, he was pressured and eventually underwent a forensic examination of his teeth and genitals, as well as X-rays of his left wrist and teeth. On 5 May 2017, on the basis of the results of the medical tests undergone by the author, the Office of the Prosecutor for Minors issued a decree determining that he was 17

* Adopted by the Committee at its ninetieth session (3 May–3 June 2022).

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



years old and ordered his transfer to a child protection centre. On 9 May 2017, the director of the centre informed the author that the medical tests had demonstrated that he was 17 years old, even though he maintained that he was 16.

3. On 18 August 2017, the State party submitted its observations on the admissibility of the communication. It claimed that the communication was manifestly ill-founded, as the author had been declared a minor and was under the care of the child protection system. The State party requested the Committee to consider the admissibility of the communication separately from the merits or to dismiss the communication. On 6 November 2017, the author submitted his observations on admissibility and the merits, expressing his disagreement with the State party's request. On 26 January 2018, the Working Group on Communications, acting on behalf of the Committee, decided to reject the State party's request to consider the admissibility and the merits of the communication separately or to dismiss the communication.

4. On 21 December 2017, the State party submitted its observations on the admissibility and merits of the communication. On 26 March 2018, the author submitted comments on the State party's observations.

5. On 11 July 2018, the author requested the Committee to grant interim measures. He pointed out that, since 5 May 2018, he has been considered an adult on the basis of the decree in which his age was determined to be a year older than his actual age. He was expelled from the child protection centre and risks being deported from the country.

6. Pursuant to article 6 of the Optional Protocol, on 11 July 2018, the Working Group on Communications, acting on behalf of the Committee, requested the State party to adopt interim measures, namely, to suspend the author's possible deportation pending the Committee's consideration of his case and to transfer him to a child protection centre.

7. On 24 August 2018, the State party requested that the Committee suspend its consideration of the communication on the grounds that administrative and civil proceedings were ongoing before the national courts. The author submitted additional information on the domestic remedies that were under way in 2019 and 2020. On 7 December 2020, the Working Group on Communications, acting on behalf of the Committee, acceded to the State party's suspension request.

8. On 30 November 2021, the author informed the Committee that, on 20 September 2021, the Supreme Court heard the author's claims and upheld Decision No. 132/2019 of First Instance Court No. 49 of Madrid, which recognized the author's actual age as reflected in the identification documents that he had submitted early on to the authorities of the State party.

9. At a meeting on 1 June 2022, the Committee, having considered the additional information provided by the author's representatives and the State party's request to dismiss the communication, noted that the author's actual age was eventually recognized by the State party's judicial authorities. Although this fact does not in itself amount to full reparation for the alleged violations of the Convention, the Committee is of the view that the recognition of the author's actual age leaves the present communication bereft of purpose and decides to discontinue its consideration of communication No. 20/2017, 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.
