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Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 138/2021*, **

Communication submitted by:	S.B. (represented by counsel, Richard Sédillot)
Alleged victim:	H.F.
State party:	Luxembourg
Date of communication:	2 June 2020 (initial submission)
Date of adoption of Views:	8 May 2023
Subject matter:	Return of a child to Luxembourg following international abduction; right to maintain personal relations and direct contact with the mother
Procedural issue:	Competence *ratione materiae*
Substantive issues:	Best interests of the child; separation of children from parents; children's rights
Articles of the Convention:	3 (1), 9 (1)–(3), 10 and 12
Article of the Optional Protocol:	7 (c)

1. The author of the communication is S.B., a French national born in 1984. She submits the communication on behalf of her son, H.F., also a French national, who was born in 2012. The author claims that the State party violated the rights of H.F. under articles 3 (1), 9 (1) and (3), 10 and 12 of the Convention. The Optional Protocol entered into force for the State party on 12 May 2016. The author is represented by counsel.

The facts as submitted by the author[1]

2.1 H.F. was born from the union between the author and her then husband, O.F. On 28 September 2015, the interim relief judge of Luxembourg District Court assigned temporary custody of H.F. to the author, parental responsibility to both parents and visitation

* Adopted by the Committee at its ninety-third session (8–26 May 2023).

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

[1] The initial submission on 2 June 2020 was supplemented by subsequent submissions dated 20 October 2020, 8 April 2021, 19 April 2021 and 16 June 2021.

rights, including the right to overnight visits, to O.F. On 12 May 2016, that court dissolved the parents' marriage.

2.2 In 2018, the author returned to France with H.F. because she had been subjected to threats. On 29 November 2018, Luxembourg District Court awarded custody of H.F. to O.F. and granted the author visitation rights.

2.3 O.F. initiated proceedings for the return of H.F. on the basis of the Convention on the Civil Aspects of International Child Abduction. On 20 December 2018, a family court in Grenoble found that the author had wrongfully removed H.F. and ordered his return to his habitual residence at the home of O.F. in Luxembourg. On 20 February 2019, citing article 13 (b) of the aforementioned Convention, the Grenoble Court of Appeal found that there was no basis for ordering the return of H.F. to Luxembourg, on the grounds that he would face a serious risk of physical and psychological danger.[2] The Court found that there was a significant risk of abuse, as reported by H.F. himself, and that comments he had made suggested that he might be contemplating suicide. On 27 June 2019, the French Court of Cassation rejected an application from O.F. for a judicial review.

2.4 On 10 July 2019, the Luxembourg Court of Appeal upheld the decision issued by the District Court on 29 November 2018, ordered that H.F. be returned to Luxembourg to live with O.F., accorded the author visitation rights, including the right to overnight visits, and maintained joint parental responsibility. On 5 September 2019, French law enforcement officers returned H.F. to the home of O.F. in Luxembourg.

2.5 On 15 October 2019, in an extraordinary interim order, a family judge at Luxembourg District Court granted the author the right to supervised visits at the Treff-Punkt service in Munsbach.[3] On 29 November 2019, a family judge at Luxembourg District Court, ruling on the merits, declared petitions from O.F. to suspend the author's visitation rights to be inadmissible. In a ruling of 18 March 2020, the Luxembourg Court of Appeal ordered an expert assessment of H.F. and stated that the extraordinary interim order of 15 October 2019 would remain in place until a final decision on the merits had been issued.

2.6 On 12 March 2020, after three supervised visits, the Treff-Punkt service decided to suspend the visits, reproving the author for involving H.F. in her dispute with her former husband, a claim which she contests. Hence, H.F. had spent only a few hours with his mother since September 2019. However, in the first report issued by the service, the supervisors noted that H.F. was happy to see her. In addition, in its report on 12 March 2020, the service found that O.F. criticized the author in the presence of H.F., did not acknowledge his son's distress and was not able to cope with it. In a letter dated 19 March 2020, the lawyer for H.F. requested the juvenile judge to order the immediate placement of H.F. in foster care, in order to ensure his safety and health, and to suspend all visits.

2.7 In a decision of 15 July 2020, Luxembourg Court of Appeal noted that it was for the parties to resume contact with the Treff-Punkt service with a view to organizing future visits. However, in a letter dated 24 July 2020, the service informed the author that it was unable to resume visits at that time, given that it had concluded in its report that doing so would be "highly detrimental to the child and would jeopardize his best interests". In a letter dated 11 November 2020, Family Division No. 1 of the Supreme Court directed the Treff-Punkt service to resume visits, in the best interests of H.F., under conditions to be determined by the service's supervisors. On 19 November 2020, the service indicated that it would not resume visits given the serious risks posed to the interests, well-being and physical health of H.F., as described in its report of 12 March 2020.

[2] Article 13 of the Convention on the Civil Aspects of International Child Abduction provides, inter alia, that: "Notwithstanding the provisions of the preceding article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that: (…) (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

[3] Treff-Punkt is a social and legal service with premises where children can meet family members in cases where there are difficulties in or obstacles to exercising visitation rights.

2.8 On 15 February 2021, the Central Social Assistance Service of Luxembourg submitted a report to the juvenile court, in which it noted that O.F. had been violent toward a child at the school attended by H.F. and that the latter's problems, including his troubling behaviour, were a consequence of the problems of O.F. The Service also noted that it had been unable to contact the lawyer representing H.F.

2.9 In a decision of 3 March 2021, Division No. 1 of the Luxembourg Court of Appeal ordered that the author be allowed to exercise her visitation rights at Treff-Punkt, in accordance with arrangements to be made by the service's supervisors. The Court issued an order barring H.F. from leaving the country without the consent of O.F. The first visit took place on 15 May 2021, and the author subsequently saw H.F. for two hours per month. According to the author, these arrangements were insufficient to relieve the distress of H.F. She contends that the resumption of very limited contact was justified by her separation from H.F.

2.10 On 4 March 2021, the Luxembourg Court of Appeal granted the author the right to supervised visits, to take place at the Treff-Punkt service. The author affirms that there were delays in arranging the visits, even though the Luxembourg Court of Appeal had stated, in its order of 10 July 2019, that it was in the interests of H.F. to maintain close contact with his parents.

2.11 In a decision of 30 March 2021, Valence Criminal Court dismissed a case that O.F. brought against the author for the offence of abduction of a minor as defined in article 227-7 of the French Criminal Code.

2.12 The author highlights her concerns about the well-being of H.F. As early as 16 September 2019, a doctor warned O.F. and the child protection services that H.F. exhibited potentially suicidal behaviour. In its report of 15 February 2021, the Central Social Assistance Service drew attention to the harmful effects that the behaviour of O.F. behaviour was having on the psychological state of H.F. The latter's high body mass index also reflects his poor well-being. The psychologist of H.F. had advised O.F. to place a GPS tracker in his son's school bag. The obsessive behaviour of O.F. causes deep insecurity in H.F. The psychologist's observations that the child was feeling well contradicted the findings of the educational services, which observed that he had great difficulty managing his emotions, that he could be aggressive with his peers and that the pathological behaviour of O.F. was causing him anxiety. He also had to repeat a year of school. The author notes that in May 2021, the Treff-Punkt service decided to assign a security guard to accompany her and ensure her safety during visits.

The complaint

3.1 The author claims a violation of article 3 (1) of the Convention. She states that in its order of 10 July 2019, the Luxembourg Court of Appeal makes almost no mention of the decision issued by the Grenoble Court of Appeal on 20 February 2019. The Grenoble Court of Appeal carefully considered the best interests of the child and concluded that the return of H.F. to Luxembourg would place him in physical and psychological danger. The Luxembourg Court of Appeal consequently issued the certificate provided for in article 42 of Regulation (EC) No. 2201/2003, thereby rendering its order of 10 July 2019 enforceable in France. The certificate was issued in violation of that article, which stipulates, among other conditions, that the judge should issue the certificate "only if the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to article 13 of the [Convention on the Civil Aspects of International Child Abduction]".[4] The issuance of the certificate by the Luxembourg Court of Appeal also breached the requirement that the child be given an opportunity to be heard. The Luxembourg Court of Appeal did not hear H.F. and did not justify its decision not to do so. According to the author, the best interests of the child were not taken into account. The fact that the Luxembourg Court of

[4] Council of the European Union, Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, *Official Journal of the European Union*, L 338, 23 December 2003, p. 1.

Appeal heard the lawyer for H.F. is not a substitute for hearing H.F. himself. At the time of the hearing, the lawyer had not met H.F. for 21 months.

3.2 The author asserts that in the extraordinary interim order issued on 15 October 2019, the Luxembourg District Court stated that it was in the interests of H.F. to maintain ties with both of his parents and to meet the author under the supervision of the Treff-Punkt service but did not explain how it was in his interests not to allow him to visit her. Similarly, in its order of 10 July 2019, the Luxembourg Court of Appeal criticized her for not making an effort to remain in Luxembourg. The author believes that all the decisions issued in Luxembourg were intended to punish her for moving to France.

3.3 The author claims a violation of articles 9 (1) and (3) and 10 (2) of the Convention on two grounds. First, she notes that the Treff-Punkt service decided to suspend her visits with H.F. because she asked him about his life with O.F., which she believes to be a legitimate question. She disputes the claim that she was attempting to involve H.F. in the conflict between his parents. According to the author, the Treff-Punkt service is responsible for implementing court decisions and does not have the authority to decide to suspend court-ordered visits. She argues that disrupting her relationship with H.F. is not in his best interests. Moreover, she had explained to the Treff-Punkt service that it was impossible for her to attend supervised visits in the middle of the week since she lives more than 600 kilometres from Luxembourg. However, for no apparent reason, the service refused to consider her circumstances. She argues that H.F. has not seen her since 29 February 2020 and that professionals have noted his distress.

3.4 Second, the author contends that in its report of 24 March 2020, the Central Social Assistance Service of Luxembourg advocated for the visits at the Treff-Punkt service to be suspended solely on the basis of unverified claims made by O.F., without consulting the teachers and therapists of H.F. The service has not followed the steps described on the website of the Ministry of Justice.[5] The author disputes the claim of the Central Social Assistance Service that it had not been possible to contact her by telephone. According to the author, the push to disrupt the relationship that H.F. had with her violates his right to maintain regular personal relations and direct contact with both parents. Similarly, the Central Authority of Luxembourg refused to intervene to allow a visit between the author and H.F., basing its decision solely on claims made by O.F. The author disputes the Authority's assessment that on 18 March 2020, she went to the home of O.F. to abduct H.F. a second time. Neither the lawyer for H.F., the juvenile judge nor the civil courts took account of the importance of maintaining the connection between the author and H.F.

3.5 The author adds that the domestic courts did not take the necessary steps to maintain a connection between her and H.F. and did not take into account the distress suffered by H.F. As a result, he was unable to maintain a relationship with her between February 2020 and May 2021, despite the author's systematic reminders of the importance of maintaining a connection between them. It was not until after the hearing on 20 April 2021 that the youth and guardianship court ordered a new social assessment. The court did not follow the recommendation made by the Central Social Assistance Service of Luxembourg in its report of 6 October 2020 that educational support measures should be put in place.

3.6 The author argues that the rights of H.F. under article 12 of the Convention have not been respected, given that all the decisions of the courts in Luxembourg were issued without him having been heard. The lawyer appointed to represent him spoke at the hearing before the Luxembourg Court of Appeal on 19 June 2019, but, at that point, she had not met with him for nearly two years. She did not initiate any procedures to allow meetings between H.F. and the author and did not respond to letters from the author's lawyer drawing her attention to the distress of H.F., asking if she intended to participate in a meeting to seek a solution and inviting her to remind O.F. of the right of H.F. to meet with the author. On 17 March 2020, the lawyer for H.F. asked the juvenile judge at the Luxembourg District Court to order the child's placement in foster care and to suspend all visitation rights. The lawyer thus

[5] https://justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-de-la-protection-de-la-jeunesse.html.

worked to separate him from the author without her being heard, even though statements had been taken from O.F.

3.7 The author considers the domestic remedies to be unreasonably prolonged given the young age of H.F. and the disruption to their relationship, which might impact his development. She argues that the appointment of a doctor by the Luxembourg Court of Appeal would result in additional delays. Moreover, it is unlikely that the procedure would result in an effective remedy in the light of the allegations set out above. According to the author, the position of the Central Authority of Luxembourg, which is represented by a lawyer who was also the senior advocate general on the bench of the Luxembourg Court of Appeal when it issued its order of 10 July 2019, and who, on the basis of the assertions made by O.F., refused to intervene to allow her to meet with H.F., suggests that every effort will be made to deprive H.F. of his connection with her.

State party's observations on admissibility and the merits

4.1 In its submission dated 4 October 2021, the State party argues that the author's version of events was presented in an incomplete and biased manner. The State party notes that between 2015 and 2016, the parents went through an extremely bitter divorce which gave rise to periods of instability for H.F. The courts initially accorded joint parental responsibility, with custody granted to the author and visitation rights, including for overnight visits, granted to O.F. In 2018, serious events left H.F. traumatized and led the author to unilaterally decide to move to the south of France, thereby preventing O.F. from exercising his visitation rights, including for overnight visits, in respect of H.F. The latter was unlawfully taken to live in France for more than 14 months, during which time he had no contact with O.F. or with his lawyer. The Luxembourg and French courts found that the move was unlawful and constituted international child abduction.[6]

4.2 In a ruling of 29 November 2018, on the basis of an expert legal and medical assessment heard in the presence of both parties and a report by the lawyer for H.F., who had interviewed him, the Luxembourg District Court decided to grant custody to O.F. and visitation rights, including for overnight visits, to the author. The Court took into account the best interests of the child as well as the author's actions that had disrupted the relationship between father and son. In 2018 and 2019, parallel proceedings were conducted regarding the return of H.F. and the author's petition for custody. The French courts granted custody to the author. However, in an order issued on 10 July 2019, the Luxembourg Court of Appeal decided that H.F. should continue to live with O.F., ordered him to be returned to Luxembourg, granted the author visitation rights, including for overnight visits, and maintained joint parental responsibility, considering it to be in the interests of H.F. On 5 September 2019, given that the author had knowingly ignored the order, law enforcement officers had to intervene to recover H.F. Consequently, in an extraordinary interim order issued on 15 October 2019, the Court downgraded the author's visitation rights, which had to be exercised at the Treff-Punkt service. The author repeatedly failed to follow the rules at Treff-Punkt, making visits difficult. In a ruling on the merits issued on 29 November 2019, the family court decided not to review the terms of the order of 10 July 2019. In a decision of 18 March 2020, the Court of Appeal ordered an expert legal and medical assessment, to be heard in the presence of both parties. The State party observes that on the same day, an event occurred at the home of O.F. which was traumatic for H.F. and was variously characterized by the parties as a "visit" or an "attempted abduction" by the author.

4.3 The State party notes that the medical, social and psychiatric reports on H.F. recommended increased medical and psychotherapeutic follow-up in the light of the extreme animosity between his parents since his early childhood and his high insulin levels. However, the condition of H.F. continued to deteriorate due to his parents' hostile behaviour and their continued recourse to the courts. His distress was medically recognized, and there was even a risk of suicide. The Luxembourg and French courts decided not to hear him directly but, rather, to evaluate his situation through his lawyer and numerous expert social and medical reports. On 22 June 2020, the author filed a motion with the Luxembourg Court of Appeal

[6] The State party refers to the expert medical assessment of 12 November 2020, ordered by the Luxembourg Court of Appeal.

requesting the correction of a material error, arguing that H.F. had not been heard. On 22 July and 12 November 2020, the Court of Appeal and the Court of Cassation dismissed the motion, finding that he had been properly heard through his lawyer and that it had been in his interests to do so.

4.4 The State party contests the admissibility of the communication with regard to the question of whether the author has exhausted domestic remedies and the question of the parallel proceedings in France. However, the State party does not consider it in the best interests of the child to specifically challenge admissibility.

4.5 On the merits, the State party argues that, in their decisions, the Luxembourg courts duly considered the best interests of the child. It refers to the efforts made by the Luxembourg Court of Appeal to determine H.F.'s best interests, its findings on his situation and the expert reports cited in the order of 10 July 2019. The State party notes that the Court of Appeal considered that the judges of first instance had rightly ordered that H.F. should live with O.F., considering that the author's decision to move to the south of France with H.F. was detrimental to his well-being and showed that she was not able to ensure that O.F. remained in H.F.'s life. The State party contests the claim that this order contradicts the decision of the Grenoble Court of Appeal and that no account was taken of the child's best interests, asserting that the Luxembourg Court of Appeal merely exercised its jurisdiction under articles 11 (6)–(8) of Regulation (EC) No. 2201/2003.

4.6 Under article 18 of the Convention, the State party argues that the parents' responsibility to act in the best interests of the child cannot be transferred to the State's institutions. It contests the claim that the domestic courts made their decisions in order to punish the author, who downplays the impact of her own behaviour. The expert reports ordered by the Luxembourg Court of Appeal related to H.F. and both of his parents and was not biased in any way. According to the State party, the expert reports objectively demonstrate that H.F.'s parents, including the author, were primarily responsible for the distress that H.F. suffered. The State party concludes that it has not violated article 3 of the Convention.

4.7 The State party contends that both parents have exercised their right to contact with H.F., given the circumstances of the case. In 2016, the author was granted custody and O.F. was granted visitation rights, including for overnight visits. In 2018, after the international abduction of H.F., the judge granted custody and residence to O.F. and visitation rights, including overnight visits, to the author. In 2019, the Luxembourg Court of Appeal upheld these arrangements. In view of the high risk of a repeat offence, the interim relief judge limited the author's access to visits through the involvement of the Treff-Punkt service. The author herself has cancelled some visits. The poor relationship between officials at the Treff-Punkt service and the author led to the issuance of a social report that resulted in the temporary suspension of her right to in-person visits. Contact by telephone or video call continued. Visits at the Treff-Punkt service resumed in November 2020. The State party concludes that there is no violation of articles 9 to 11 of the Convention.

4.8 The State party contends that H.F. has been heard and his opinion considered, as documented in the file containing numerous reports from psychologists, social workers and child psychiatrists and, pursuant to article 388-1 of the Civil Code, from his lawyer, including in connection with the issuance of the certificate provided for in article 42 of Regulation (EC) No. 2201/2003. The State party notes that, in its ruling of 22 July 2020, the Luxembourg Court of Appeal found that the fact that H.F. had been heard through his lawyer did not constitute a material error. During the proceedings before the Court of Appeal, the author did not express any disagreement with the lawyer's position, which was corroborated by the above-mentioned reports. According to the State party, the author's decision to unlawfully take H.F. to live in France made it impossible for his lawyer to see him. In addition, the lawyer's most recent report, dated 14 February 2020, states that H.F. had been heard and notes his severe distress. According to the State party, arguing for a direct hearing of H.F. would be psychologically harmful, given his very young age – from 3 to 8 years – from the outset of the proceedings and the serious conflict between his parents, including violent and traumatic events involving him. Consequently, the domestic authorities did not seek to involve him more directly in the procedures, since that would not have been in his interests or conducive to his well-being. Article 12 of the Convention was therefore not violated.

Author's comments on the State party's observations

5.1 In her comments of 22 February and 19 April 2022, the author denies that she was involved in any attempted or actual child abduction. Noting that the State party refers to the expert medical report of 12 November 2020 to support its claim that she was responsible for the international abduction of H.F., she argues that a doctor is not competent to make legal determinations. She claims that the State party fails to recognize that on 20 February 2019, Grenoble Court of Appeal decided not to order the return of H.F. to Luxembourg on the grounds that he would be at risk of serious harm. According to the author, the Luxembourg courts disregarded the decision of the Grenoble Court of Appeal and should have explained why H.F. should live in Luxembourg, notwithstanding the determination made by the Grenoble Court of Appeal, pursuant to article 42 (2) of Regulation (EC) No. 2201/2003.

5.2 The author disputes the claim that H.F. was given a satisfactory hearing. On 19 June 2019, the date of the hearing before the Luxembourg Court of Appeal, his lawyer had not seen him for 21 months, a considerable period of time for a child of H.F.'s age. Nevertheless, the lawyer took no steps to speak to him. In addition, the Court of Appeal failed to order her to either hear H.F., decide for herself whether to hear him or explain the lack of a hearing.

5.3 The author argues that the Luxembourg courts did not consider the fact that while he was living in France, H.F. did not raise any difficulties concerning conflict between his parents. The State party claims that the author involved H.F. in the parents' dispute, but she claims that she simply asked him questions about his life and pastimes. The State party refers to the social assessment of 24 March 2020, but the domestic courts did not take into account the fact that the assessment report had been written solely on the basis of statements made by O.F. and without the author having been contacted. She reiterates that her visits were suspended for 15 months, during which time she had no contact with H.F. She states that no steps were taken to maintain her connection with him between February 2020 and May 2021, when the visits resumed. According to the author, the State party does not explain the incompatibility between the role of the Central Authority and that of the judge from the Public Prosecutor's Office, who worked on a case that centred on the involvement of the Authority.

5.4 The author notes that, in a report dated 19 January 2022, the Treff-Punkt service sent a letter to the youth protection section of the Public Prosecutor's Office at the Luxembourg District Court, in which it describes H.F. as seemingly caught between loyalty to the service's employees and to O.F. The authors of the report mention that O.F. is uncooperative with regard to expanding the author's visitation rights and consider that he is manipulating H.F. psychologically, which makes him anxious and insecure. They suggest that he should be separated from O.F. in order to protect him from psychological manipulation and alienation, which are endangering his development, and that he should be given therapeutic support. However, at the time the author's comments were submitted, no action had been taken on the report.

5.5 The author also cites a report that was issued on 3 February 2022 by the Central Social Assistance Service and sent to the juvenile court. The report states that the Service is "very concerned" that H.F. cannot show his feelings about the author, with whom he needs physical contact. The visits supervisor also noted that she had never observed any affection between H.F. and O.F., who dominated and humiliated the child. The Service states that educational support should have been provided sooner given the scale of the problem and of H.F.'s distress. It recommends that he "must be removed from an environment that is harming his development and his psychological and emotional well-being" and that ways of reintegrating him into the author's home should be explored. The Service also explains that the author is concerned solely with the welfare of H.F. The author states the importance of making a decision about his future in the light of the damage that she believes has been caused by the inaction of the Luxembourg authorities.

5.6 On 28 March 2022, the family judge at the Luxembourg District Court issued an interim decision, ruling that the author's petition for H.F. to live with her was baseless. In support of her petition, the author had referred to the content of the Central Social Assistance Service report of 3 February 2022 and the report of the Treff-Punkt service of 19 January 2022. O.F. then submitted two requests for custody of H.F. to be restored to him, for which

hearings were granted on 15 and 22 March 2022, respectively. The author states that it was not explained to her or her lawyer that the second request for restoration of custody might lead to the dismissal of her petition for H.F. to live with her, even though the restoration of custody had been ordered for brief periods that did not alter the urgent nature of her petition, and that the judge had noted that restoration of custody could be ordered only once. The judge considered that the case was not consistent with the legislature's commitment to ensuring that the extraordinary interim procedure before the family judge should be completed within strict time limits owing to the need for absolute urgency. According to the author, the decision reflects the "desire" to punish her. She claims that for months, H.F. was deprived of any relationship with her, and that the order issued by the Luxembourg Court of Appeal on 10 July 2019 regarding her visitation rights, including for overnight visits, has never been enforced.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee notes that in her initial submission, the author argues that exhausting domestic remedies would result in unreasonable delays given, inter alia, the young age of H.F. It also notes that, on 12 November 2020, the Court of Cassation dismissed the author's motion requesting the correction of a material error. In the motion, she had invoked article 3 of the Convention in respect of, inter alia, the court order to return H.F. to the home of O.F. and of the alleged lack of a hearing of H.F. in that regard. The Committee further notes that the State party has not contested the admissibility of the communication. Accordingly, the Committee concludes that it is not prevented from examining the present complaint under article 7 (e) of the Optional Protocol.[7]

6.3 The Committee notes that the author claims that the Luxembourg Court of Appeal violated article 42 of Regulation (EC) No. 2201/2003. Insofar as the author alleges a violation of the Regulation, the Committee notes that under article 5 of the Optional Protocol, it is not competent to consider allegations of such violations. The Committee therefore concludes that this part of the communication is incompatible *ratione materiae* and declares it inadmissible under article 7 (c) of the Optional Protocol.

6.4 The Committee notes that the State party does not wish to challenge the admissibility of the communication, which contains allegations under articles 3 (1), 9 (1) and (3), 10 and 12 of the Convention. It also notes that the author's claims that she was not heard by the Central Social Assistance Office and that the Treff-Punkt service decided to suspend the visits based solely on claims made by O.F. raise substantive issues under article 9 (2) of the Convention. Accordingly, and in the absence of any other indication of obstacles to admissibility, the Committee declares the communication to be admissible inasmuch as it raises issues under articles 3 (1), 9 (1)–(3), 10 (2) and 12 of the Convention, and proceeds to its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's allegations that the State party violated the rights of H.F under articles 3 (1), 9 (1)–(3), 10 (2), and 12 of the Convention by failing to take sufficient account of his best interests, by limiting his contact with the author and by failing to hear him in connection with the judicial decisions concerning his return from France to Luxembourg and with the subsequent proceedings relating to the author's visitation rights and his place of residence.

[7] *S.K. v. Denmark* (CRC/C/90/D/99/2019), para. 6.2.

7.3 The Committee will first consider the author's allegations under articles 3 and 12 of the Convention. In that regard, it recalls that, according to article 3 (1) of the Convention, States parties must ensure that the best interests of the child are a primary consideration in all actions undertaken concerning children by public institutions. The Committee also recalls that it is generally 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. It is therefore not for the Committee to interpret domestic law or to assess the facts of the case and the evidence instead 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.[8]

7.4 In the present case, the Committee notes that, in its order of 10 July 2019, to which the author refers, the Luxembourg Court of Appeal held that "the best interests of the child must be the sole criterion guiding the Court in its decision-making: all other considerations are merely secondary". The Court therefore ruled on where H.F. should live, his return to Luxembourg, visitation rights, including overnight visits, the attribution of parental responsibility and other issues with explicit reference to his best interests. The Court took into account his interests with regard to maintaining relations with both of his parents, ensuring a stable and calm routine and harmonious psychological and emotional development. Specifically, the Court considered H.F.'s age, the conflict between his parents, the harm that he suffered as a result of the author's decision to take him to live in France in 2018, his parents' behaviour, his relationship with each of them and the findings of social assessment reports and the child psychiatrist's report. In addition, the Court explicitly considered the author's arguments against ordering H.F. to live with O.F., but concluded, on the basis of the above-mentioned evidence, that both parents were capable of parenting and that it was in the interests of H.F. to return to live with his father. While the Luxembourg Court of Appeal did not explicitly refer to the considerations of the Grenoble Court of Appeal, the Committee notes that it nevertheless conducted a detailed and extensive analysis of H.F.'s best interests. The Committee also notes that the author does not appear to claim otherwise.

7.5 In this regard, the Committee notes, based on the case file, that the domestic courts made decisions that took into account the general welfare of H.F., the extent to which he felt comfortable with both parents, and his nightmares, sadness, anxieties and fear of abandonment. The Committee cannot therefore conclude that the domestic courts did not take into account "H.F.'s distress" as claimed by the author.

7.6 With regard to the author's argument that the family judge of the Luxembourg District Court did not explain, in the extraordinary interim order of 15 October 2019, why it would be in the interests of H.F. not to spend time with her, the Committee notes that, in the decision, the judge took into account the fact that it is in the interests of any child whose parents are separated to maintain the closest possible contact with each parent. The judge also took account of the fact that the author had not provided evidence of her ability to comply with court decisions, including the order issued by the Luxembourg Court of Appeal on 10 July 2019, and stated that she had decided to grant the author visitation rights in the form of supervised visits at the Treff-Punkt service in order to avoid another abduction of H.F. and to ensure that the relationship between mother and child was monitored.

7.7 In view of the foregoing, the Committee does not consider that the assessments contained in the above-mentioned judicial decisions can be described as arbitrary or that they constituted a denial of justice. The Committee also sees no evidence to support the author's claim that these decisions failed to take account H.F.'s interests as a primary consideration, as required under article 3 of the Convention.

7.8 As to the claim that H.F. was not heard, the Committee notes the State party's observation that H.F. was heard and his opinion noted in numerous documents issued by psychologists, social workers and child psychiatrists and by his lawyer. The Committee also notes that, according to the State party, the national authorities decided not to hear him in

[8] *U.A.I. v. Spain* (CRC/C/73/D/2/2015), para. 4.2; *A.Y. v. Denmark* (CRC/C/78/D/7/2016), para. 8.8; *C.E. v. Belgium* (CRC/C/79/D/12/2017), para. 8.4; *Z.T. et al. v. Switzerland* (CRC/C/92/DR/101/2019), para. 9.6.

order to avoid any psychological harm, given his young age – from 3 to 8 years – during the proceedings and his involvement in the conflict between his parents. In this regard, the Committee recalls that article 12 of the Convention imposes no age limit on the right of the child to express her or his views, and that it discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him.[9] The Committee further recalls that States parties must be aware of the potential negative consequences of an inconsiderate application of this right, particularly in cases involving very young children, or in instances where the child has been a victim of a criminal offence, sexual abuse, violence, or other forms of mistreatment.[10] States parties must undertake all necessary measures to ensure that the right to be heard is exercised ensuring full protection of the child.[11] The Committee also recalls that if the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views are transmitted correctly to the decision maker by the representative.[12] Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.[13]

7.9 In the instant case, the Committee notes that under article 388-1 of the State party's Civil Code, the courts are able, and even obliged, to hear a minor if he or she requests to be heard and is capable of discernment. Such a hearing may also be conducted by a third party. It appears from the file that it was pursuant to this provision that a lawyer was appointed in February 2017 to defend the interests of H.F., and the author does not dispute that the lawyer was heard. While the author argues that at the time of the hearing before the Luxembourg Court of Appeal on 19 June 2019, the lawyer had not seen H.F. for 21 months, the Committee notes that for more than a year, including the entire duration of the appeal proceedings in which the author complains that H.F. was not heard, he was not in Luxembourg due to her own decision to abduct him and take him to France. In these circumstances, the Committee considers that the fact that H.F. was not heard in the appeal proceedings cannot be attributed to the State party. In addition, the file shows that on 14 February 2020, the lawyer for H.F. noted that after H.F. returned to Luxembourg on 5 September 2019, she spoke with him on 30 September 2019 and 12 February 2020. With regard to the alleged lack of cooperation by the lawyer for H.F. and the positions that she took in the legal proceedings, the Committee considers that the author has not provided sufficient information to substantiate this allegation. It notes that the domestic courts took into account H.F.'s perspective, as expressed in the various reports in the file, including with respect to his wish to maintain his relationship with both of his parents and the extent to which he felt comfortable with them, as well as his general well-being. In the light of the foregoing, the Committee considers that, to the extent that it was materially possible to hear H.F. in Luxembourg and taking into account the specific circumstances of the case, including H.F.'s distress as a result of the conflict between his parents and his degree of maturity, the domestic courts respected his right to be heard when they examined his above-mentioned views, in accordance with article 12 of the Convention.

7.10 The Committee notes the author's allegations under articles 9 (1)–(3) and 10 (2) of the Convention with regard to the suspension of visits by the Treff-Punkt service and the limitations placed on her contact with H.F., the alleged refusal by the Treff-Punkt service to take into account the fact that she lived more than 600 kilometres from Luxembourg, the alleged delays by the judicial authorities in ensuring H.F.'s continued contact with the author, and the allegation that H.F.'s lawyer, the Central Social Assistance Service and the Central Authority of Luxembourg based their respective positions on statements made by O.F. statements without hearing her.

7.11 The Committee recalls that under the terms of article 9 (1) of the Convention, States parties are required to ensure that a child is not to be separated from his or her parents against their will, except when the competent authorities determine, in accordance with applicable law and procedures and in a decision subject to judicial review, that such separation is

[9] Committee on the Rights of the Child, general comment No. 12 (2009), para. 21.
[10] Ibid.
[11] Ibid.
[12] Ibid., para. 36.
[13] Ibid.

necessary in the best interests of the child. Such determinations may be necessary in a particular case involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. The Committee also recalls that in accordance with article 9 (2) of the Convention, in any proceedings pursuant to article 9 (1), all interested parties must be given an opportunity to participate in the proceedings and make their views known. It further recalls that under article 9 (3), States parties are required to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except where this is contrary to the child's best interests. Lastly, the Committee recalls that article 10 (2) of the Convention stipulates, inter alia, that a child whose parents reside in different States must have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents.

7.12 In the instant case, the Committee notes that the author's allegations regarding the suspension of visits call into question the assessment of the facts and evidence conducted by the State party's institutions, including the Treff-Punkt service. It also notes that the Treff-Punkt service decided to suspend the author's visits in March 2020 on the grounds that H.F.'s mental and psychological well-being was at risk during the visits and at other times. The Treff-Punkt service took into account the fact that the author did not accept its operating environment or mandate, that she regularly launched verbal attacks on the family support service and the counsellor, that she maligned the service's professionals and that she did not realize that she was putting H.F. under psychological stress. The Treff-Punkt service also found that parental conflict was pervasive, that the author involved H.F. in that conflict and that her reactions made him uncomfortable. It also considered the parenting skills of both parents. Based on these considerations, the Committee cannot conclude that the initial decision of the institution designated to conduct the visits was arbitrary or constituted a denial of justice. Moreover, insofar as the author complains that she met with H.F. no more than three times before the visits were suspended, the Committee notes that she herself decided to cancel the other two visits.

7.13 The Committee also notes that in its letters dated 24 July 2020 and 19 November 2020, the Treff-Punkt service decided not to resume the visits, even though the judicial had indicated that the parents should contact the service to resume visits and a subsequent judicial request was issued for their resumption. The Committee further notes that both the judicial authorities and the Treff-Punkt service based their respective positions on their own assessment of H.F.'s interests and well-being. The Committee notes that in its letter dated 19 November 2020, the Treff-Punkt service reiterated its concerns regarding H.F.'s interests and mental and psychological well-being and stated that it was willing to resume visits if it received assurances that the well-being of H.F. would no longer be put at risk. In the light of the foregoing, the Committee notes that while the State party's authorities had differing understandings of the extent to which it was in H.F.'s interests to participate in visits with the author, their respective analyses were always based on a detailed assessment of what would be in his interests, in the context of his vulnerability due to the conflict between his parents, as well as an assessment of how the author's visits to H.F. went and the effect they had on him. The Committee finds that, while the author challenges the assessments made by the Treff-Punkt service, she has not demonstrated that they were arbitrary or constituted a denial of justice.

7.14 The Committee further notes that, while the author and the State party disagree on whether she maintained contact with H.F. during the time when the visits were suspended and on the date when the visits resumed, several documents in the file show that there was telephone contact between the author and H.F. during that period. The Committee notes that the author thus maintained contact with H.F. It also notes that, according to the file, the visits resumed in May 2021. With regard to the author's allegation that judicial delays prevented her from seeing H.F., the Committee notes that, according to its review of the case file, contact was reduced on the basis of a decision by one of the State party's authorities to suspend visits out of concern for the welfare of H.F. The Committee also notes that, despite the author's allegation that the Treff-Punkt service did not provide reasons for denying her request to reschedule visits as she lived in the south of France, the file shows that the service acknowledged that the schedule required compromise by all parties but that it had been

planned primarily on the basis of the needs and activities of H.F. The Committee can find no arbitrariness in this approach.

7.15 With regard to the author's allegation that the Central Authority of Luxembourg refused to intervene to allow her to meet with H.F. solely on the basis of claims made by O.F., the Committee notes that the author refers to an email from the Authority which mentions exchanges between her and O.F.'s lawyers. The email also indicates the position of the author's lawyer. The Committee sees no evidence to support the assertion that the Central Authority ignored the author's opinion. Moreover, the Committee sees no indication that the right of H.F. under the Convention have been violated on the grounds that the Central Authority is represented by the same person who was the senior advocate general on the bench of Luxembourg Court of Appeal when it issued its order of 10 July 2019. Furthermore, with respect to the Central Social Assistance Service report of 24 March 2020, the Committee considers that it is not in a position to assess the author's disagreement with the Service's finding that it had failed to reach her despite several attempts. The Committee further notes that the author provided input to the court proceedings to which she was a party, as well as to the subsequent reports by the Service dated 30 September 2020 and 3 September 2021, and to the expert medical assessment of 12 November 2020, and that she was also heard by the lawyer for H.F.

7.16 The Committee notes that in her comments of 19 April 2022, the author argues that she has again been deprived of contact with H.F. "for months". The Committee notes that an examination of the file reveals that this was because H.F. refused to see her. It also notes, in the same context, that the author disagrees with the family judge's decision of 28 March 2022. However, the Committee considers that the author has not demonstrated that the family judge's decision not to grant her motion for interim relief was arbitrary or constituted a denial of justice, given the reasoning of the decision regarding the author's agreement to the two requests for restoration of custody. The Committee further notes the author's reference to the report of 19 January 2022 by the Treff-Punkt service and the report of 3 February 2022 by the Central Social Assistance Service. The author complains that the State party's authorities have not acted on the content of these reports, including H.F.'s refusal to see her following the resumption of the visits, but the Committee notes that the author has not indicated whether she had taken any steps, beyond her motion for interim relief, to obtain a judicial decision in this regard. The Committee therefore considers that the author has not demonstrated a violation by the State party of H.F.'s rights under the Convention in this regard.

7.17 In the light of the foregoing, and noting, in particular, that the decisions of the State party's authorities were based on detailed assessments of H.F.'s best interests, the Committee cannot conclude that the author has demonstrated that the various decisions concerning the visits violated articles 9 (1)–(3) or 10 (2) of the Convention.

7.18 The Committee, acting under article 10 (5) of the Optional Protocol, finds that the facts of which it has been apprised do not amount to violations of articles 3 (1), 9 (1)–(3), 10 (2) and 12 of the Convention.