



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Decision approved by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure No. 5/2016<sup>1,2</sup>

<i>Communication submitted by:</i>	J.A.B.S.
<i>Alleged victims:</i>	A.B.H and M.B.H.
<i>State party:</i>	Costa Rica
<i>Date of communication:</i>	19 September 2015
<i>Date of adoption of decision:</i>	17 January 2017
<i>Subject matter:</i>	Registration of birth in the civil registry
<i>Procedural issue:</i>	Failure to substantiate claims
<i>Article of the Convention:</i>	8
<i>Article of the Optional Protocol:</i>	7 (f)

<sup>1</sup> Approved by the Committee at its 74th session (16 January to 3 February 2017).

<sup>2</sup> The following Committee members took part in the consideration of the present communication: : Suzanne Aho Assouma , Amal Salman Aldoseri, Bernard Gastaud, Peter Gurán, Olga A. Khazova, Hatem Kotrane, Gehad Madi, Benyam Dawit Mezmur, Yasmeen Muhamad Shariff, Clarence Nelson, Wanderlino Nogueira Neto, Sara de Jesús Oviedo Fierro, José Ángel Rodríguez Reyes, Kirsten Sandberg and Renate Winter.



1.1 The author of the communication is J.A.B.S., a Costa Rican and United States citizen born in 1957. He submits the communication on behalf of his twin sons, A.B.H. and M.B.H., born on 23 June 2014. He claims that his sons are victims of a violation of article 8 of the Convention. The author is not represented by counsel. The Optional Protocol entered into force for the State party on 14 April 2014.

1.2 Based on the Committee's rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 27 June 2016, the Committee, acting through its Working Group on Communications, denied the author's request for interim measures for the provisional registration of his sons' birth in the Costa Rican Civil Registry using the surnames assigned to them in the United States of America. On the same date, the Committee determined, in accordance with rule 18 (1) of its rules of procedure, that a consideration of admissibility did not require sending the communication back to the State party for its comments.

### **Factual background**

2.1 The author's sons, A.B.H. and M.B.H., were born in the State of California (United States of America), by means of in vitro fertilization, using a donor's ovum and the author's semen. The pregnancy was carried to term by a surrogate mother. On 2 May 2014, the Supreme Court of California declared the author to be the sole legal parent of the two twins who, at the time, had not yet been born, and granted him exclusive parental authority, while denying legal parenthood to the surrogate mother, in keeping with the surrogacy agreement she had signed with the author.

2.2 The United States birth certificates of the author's two sons contained two surnames: the author's first surname and the egg donor's maiden name. The author's name was registered on the certificates in the space for the father's name, and the space for the mother's name was left blank. The author points out that the egg donation agreement contained a clause that provided for keeping the identity of the egg donor confidential. Nevertheless, she had agreed to disclose her identity to the author and to allow for the possibility that, when the boys reached the age of 18, they could contact her if they so desired.

2.3 On 22 July 2014, the author and his two sons entered Costa Rica using their United States passports. On 30 July 2014, the author requested that his sons' birth be recorded in the Civil Register of the Supreme Electoral Tribunal of Costa Rica. By decision of 19 August 2014, the Civil Registry approved the registration of the birth of the author's sons using the author's two surnames, in accordance with the Costa Rican Civil Code, and informed the author of its decision on the same date.

2.4 The author lodged an appeal against the decision of the Civil Registry, which was turned down on 3 October 2014 by the Supreme Electoral Tribunal on the grounds that the birth of the author's children in the United States and their registration under its laws did not require Costa Rica to record those births in identical fashion, given the existence in Costa Rica of mandatory national regulations in force on the matter. The Tribunal considered that, since the boys' maternal parentage was indeterminate, the only legally acceptable solution was to apply the analogous Civil Code provisions pertaining to children born out of wedlock<sup>3</sup> and to assign the boys their father's two surnames.

2.5 On 19 December 2014, the Constitutional Chamber of the Supreme Court rejected the author's application for a writ of *amparo*, upholding the finding that the laws in the children's country of origin were not binding on Costa Rica, given the existence in Costa Rica of mandatory regulations on birth registration. The Court also found that, in any event, there had been no infringement of fundamental rights, inasmuch as the author had not been denied the right to register his children as Costa Ricans.

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<sup>3</sup> According to article 52 of the Costa Rican Civil Code, children born out of wedlock are assigned the mother's two surnames.

## Complaint

3.1 The author alleges a violation of his sons' right to preserve their identity under article 8 of the Convention, and in particular, the right to have full knowledge of their biological origins. By bearing the maiden name of their biological mother, the boys are able to preserve their true birth identity and to maintain a permanent natural link to it.

3.2 The author contends that the application of the Costa Rican Civil Code was erroneous and arbitrary in that it bears neither direct nor strict relation to the Constitution or to the Options and Naturalization Act of Costa Rica<sup>4</sup> and that the provisions of the Civil Code are applicable to Costa Ricans born in the national territory but not those born abroad.

3.3 The author also contends that the fact that he was notified by the Civil Registry of the Supreme Electoral Tribunal of its decision concerning the way in which his sons' birth would be recorded only after it had been adopted, thus preventing him from challenging it, was a violation of his children's right to due process in administrative matters. In addition, the author was not granted the possibility of withdrawing his request to register his sons as Costa Ricans in the event that his request to change their last names was not approved.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

4.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether it is admissible.

4.2 The Committee takes note of the decision of the Costa Rican authorities, pursuant to which the record of the children's birth in the Civil Register must be carried out in accordance with the criteria set forth in the Costa Rican Civil Code, independently of the criteria applicable in the children's country of birth. The Committee recalls in this regard that, in accordance with article 7 of the Convention, States parties are to ensure the implementation of the right to a name in accordance with their national law. The Committee considers that the author has not presented convincing arguments to demonstrate that the assignment of his two surnames to his children, in keeping with Costa Rican law, constitutes a barrier to their ability to have full knowledge of their biological origins or fails to respect their right to preserve their identity.

4.3 As to the author's argument concerning the allegedly erroneous application of Costa Rican law by the national authorities, the Committee notes that the interpretation or application of national legislation is primarily the function of the national authorities, unless such interpretation or application is clearly arbitrary or constitutes a denial of justice. In the present case, the author's argument to the effect that there are contradictions in the domestic legislation is unfounded and, as such, cannot serve as a basis for determining whether the conduct of the national authorities was arbitrary or constituted a denial of justice.

4.4 As to the author's claims to the effect that it was impossible to challenge the decision of the Civil Registry, the Committee observes that the author was able to appeal that decision and lodge an application for *amparo* before the Supreme Court. The Committee also notes that the author has not demonstrated to what extent his inability to challenge the decision of the Civil Registry before it was issued impaired the rights of his children as set forth in the Convention.

4.5 In the light of the above, the Committee declares the communication to be manifestly ill-founded and inadmissible under article 7 (f) of the Optional Protocol.

5. The Committee decides:

(a) That the communication is inadmissible under article 7 (f) of the Optional Protocol; and

<sup>4</sup> The author cites article 13 of the Constitution and articles 1 and 9 of the Options and Naturalization Act, which provide that children who are born abroad of a Costa Rican father or mother and whose birth is recorded in the Civil Register are considered to be Costa Ricans by birth.

(b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.

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