



Convention on the Rights of the Child

Distr.: General
15 February 2023
English
Original: French

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. 102/2019* ** ***

<i>Communication submitted by:</i>	M.M. (represented by counsel, Immacolata Iglío Rezzonico)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	23 October 2019 (initial submission)
<i>Subject matter:</i>	Deportation to Ukraine of a Ukrainian national (now an adult) who arrived in Switzerland at the age of 15 with his parents, failed asylum-seekers
<i>Procedural issue:</i>	Inadmissibility <i>ratione temporis</i>
<i>Articles of the Convention:</i>	2, 3, 6, 12, 13, 14, 19, 22, 24, 29 and 39
<i>Articles of the Optional Protocol:</i>	6 and 7 (g)

1. The author of the communication is M.M., a national of Ukraine born on 19 June 1999. He claims that his deportation to Ukraine would constitute a violation of his rights under articles 2, 3, 6, 12, 13, 14, 19, 22, 24, 29 and 39 of the Convention. The Optional Protocol entered into force for the State party on 24 July 2017.

2. In January 2015, the author, who lived in Mariupol, Ukraine, left the country with his parents and arrived in Switzerland. On 20 January 2015, the author and his parents filed an application for asylum in Switzerland. The author told the national authorities that he would be in danger if returned to Ukraine because of his religious beliefs as a Jehovah's Witness – he said that he had previously been threatened and beaten at school – and because of the ongoing conflict in the country. The State Secretariat for Migration issued a decision on 30 June 2017 rejecting the asylum application filed by the author and his parents and ordering their removal from Switzerland. On 28 July 2017, the author and his parents appealed that decision to the Federal Administrative Court. On 12 April 2019, the Federal Administrative Court upheld the decision of the State Secretariat for Migration.

* Adopted by the Committee at its ninety-second session (16 January–3 February 2023).

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

*** Pursuant to rule 8 (1) (a) of the Committee's rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Philip Jaffé did not participate in the examination of the communication.



3. On 24 October 2019, pursuant to article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, rejected the author's request that, as an interim measure, his removal to Ukraine be suspended while his case was under consideration by the Committee.

4. On 20 December 2019, the State party submitted its observations on the admissibility of the communication and asked the Committee to consider admissibility separately from the merits. The State party argued that the communication should be considered inadmissible *ratione temporis* under article 7 (g) of the Optional Protocol, as all the facts presented in the communication had been addressed in the 30 June 2017 decision of the State Secretariat for Migration and had taken place before 24 July 2017, the date on which the Optional Protocol entered into force for Switzerland. The State party also pointed out that on 30 June 2017, the date of the State Secretariat for Migration decision, the author had already become an adult.

5. On 19 May 2020, the author submitted his comments on the admissibility of the communication. The author objected to the State party's request that the admissibility of the communication be considered separately from the merits. He argued that the communication was admissible *ratione temporis* because the alleged violations had continued after the entry into force of the Optional Protocol. He pointed out that the Federal Administrative Court had issued its decision on 12 April 2019; in other words, after the Optional Protocol had entered into force for the State party.

6. On 25 October 2021, the working group on communications, acting on behalf of the Committee, decided to grant the State party's request for the admissibility of the communication to be considered separately from the merits.

7. On 2 May 2022, the State party asked the Committee to discontinue its consideration of the communication. The State party said that the State Secretariat for Migration had granted the author temporary admission on 27 April 2022. The State party noted that temporary admission is governed by chapter 11 of the Federal Act of 16 December 2005 on Foreign Nationals and Integration (SR 142.20). Under article 83 (4) of the Act, a decision to remove or deport a foreign national to his or her country of origin cannot reasonably be enforced if that would put him or her at specific risk, for example if there is a war, a civil war or widespread violence or if the person needs medical treatment. The State party indicated that temporary admission, despite the nomenclature and notwithstanding the periodic verification by the State Secretariat for Migration of the foreign national's compliance with the related requirements, can be revoked only if radical political change takes place in the country of origin; in other words, lasting regime change entailing the elimination of the risk faced by the person in question. If a foreign national's temporary admission is revoked, he or she can appeal the decision through domestic channels.

8. On 13 July 2022, the author noted that, when the State Secretariat for Migration issued its decision granting him temporary admission on 27 April 2022, he already had a regular permit, which he had obtained through his marriage to a Swiss citizen. The author stated that, in any event, the temporary admission decision did not undo the violation of his Convention rights by the State party during the asylum proceedings. The author therefore requested that the Committee continue its consideration of the communication.

9. At a meeting on 25 January 2023, the Committee, having considered that the author was no longer at risk of being deported to Ukraine and that the communication was now moot, decided to discontinue the consideration of communication No. 102/2019 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.