



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. 157/2021* **

<i>Communication submitted by:</i>	E.P. and L.B. (represented by counsel, Pierre Bayenet)
<i>Alleged victim:</i>	L.B.
<i>State party:</i>	Belgium
<i>Date of communication:</i>	25 March 2021 (initial submission)
<i>Date of adoption of decision:</i>	8 February 2022
<i>Subject matter:</i>	Academic performance of a student in general secondary education
<i>Procedural issue(s):</i>	Lack of substantiation
<i>Substantive issue(s):</i>	Discrimination; best interests of the child; effective remedy
<i>Articles of the Convention:</i>	2, 3 (1), 19, 28 (1) (c) and (e) and 29
<i>Article(s) of the Optional Protocol:</i>	7 (f)

1.1 The authors of the communication are E.P., a national of Belgium and Romania born in 1977, and her son, L.B., a Belgian national, born in 2003. They claim that the State party has violated L.B.'s rights under articles 2, 3 (1), 19, 28 (1) (c) and (e) and 29 of the Convention. The authors are represented by counsel, Pierre Bayenet. The Optional Protocol entered into force for the State party on 30 August 2014.

1.2 When the communication was submitted, L.B. was in the fifth year of general education at the Lycée Molière, having completed his fourth year at the Centre d'Enseignement Secondaire Libre Notre-Dame-des-Champs with a restriction requiring him to change stream. The authors requested that the Committee recommend the application of interim measures to allow L.B. to re-enter the general education stream at the Centre Notre-Dame-des-Champs as if he had completed his fourth year of secondary education without any restriction. On 7 April 2021, pursuant to article 6 of the Optional Protocol, the Working Group on Communications, acting on behalf of the Committee, rejected the authors' request

* Adopted by the Committee at its eighty-ninth session (31 January–11 February 2022).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffé, Sopia Kiladze, Gehad Madi, Benyam Dawit Mezmur, Clarence Nelson, Otani Mikiko, Luis Ernesto Pedernera Reyna, Zara Ratou, José Ángel Rodríguez Reyes, Ann Marie Skelton and Velina Todorova.



for interim measures. On the same date, the Committee determined, in accordance with rule 18 (1) of its rules of procedure under the Optional Protocol, that a consideration of admissibility did not require sending the communication back to the State party for its comments.

The facts as presented by the authors

2.1 E.P. grew up in Romania. After immigrating to Belgium, she gave birth to L.B., whose father is also of Romanian origin. E.P. has custody of L.B.

2.2 In September 2017, L.B. enrolled at the Centre d'Enseignement Secondaire Libre Notre-Dame-des-Champs. This independent religious school is open to all and is subsidized by the State party.

2.3 In Belgium, secondary education is divided into four streams: general, technical, vocational and artistic. General education lasts for six years and prepares students for tertiary education. At the Centre d'Enseignement Secondaire Libre Notre-Dame-des-Champs, L.B. was in the general education stream.

2.4 L.B. did not pass his third year at Notre-Dame des Champs during the 2017/18 school year. As a result, he was required to repeat the year, which he successfully completed on the second attempt. The experience was not easy, however, as he felt highly stigmatized and sensed that he was considered to be a second-class student. Some teachers referred to him as "le redoubleur" (the repeating student).

2.5 E.P. encouraged L.B. to prepare for the fourth-year examinations in parallel with the third year of schooling. Students who successfully complete the fourth year are awarded a certificate of completion of intermediate secondary education, known as the CE2D. L.B. did not succeed in obtaining this certificate. However, he passed three examinations at the fourth-year level. These examinations, in French, history-geography and English, were organized by the central Examination Board.

2.6 The events described in the present communication took place during L.B.'s fourth year of schooling, in the 2019/20 school year. During this period, L.B. was bullied at school and had a difficult time dealing with the crisis of the coronavirus (COVID-19) pandemic; these two events affected him deeply. The bullying was related to his national origins.

2.7 L.B. consulted a psychiatrist, who stated that L.B. had first come to see him on 22 February 2020. At the time, L.B. was in a state of distress following incidents at his school involving bullying by a group of younger students. Moreover, various people, including teachers at the school, had referred to him by alluding to his Romanian origins. This was very difficult for L.B., who had developed an aversion to school. After a few sessions with the psychiatrist, L.B.'s interest in studying began to return, but only gradually, and he remained ambivalent about school.

2.8 On 2 January 2020, E.P. sent an email to the person in charge of school mediation in the French Community. She stated that L.B. was marginalized and labelled as a "*doubleur décrocheur*" (a failure and a dropout), that he was stigmatized at school, that he felt very bad, that he cried at home, that a teacher had called him "the Romanian", which had caused some students to laugh and mock him as a "dirty gypsy", and that he had lost all motivation at school. She also stated that she had asked L.B.'s teacher to inform her of any worrying situation, but that the teacher had not done so. If mediation was set up, L.B. feared retaliation from his teachers because he felt very stigmatized, and he did not want to be labelled any more.

2.9 Pursuant to this request, mediation was organized by a professional specializing in school mediation, employed by the Wallonia-Brussels Federation. The first session took place on 23 January 2020.

2.10 In an email dated 20 February 2020, E.P. informed the mediator that the situation had not improved. She cited several insults directed at L.B. by other students. She also said that some students had filmed the incidents with their cell phones. The school took action and informed E.P. that the children concerned had been suspended from school for a few days.

2.11 In an email dated 17 June 2020, the mediator noted that the situation was improving. On 18 June 2020, E.P. sent a message indicating that measures had been put in place at the school to allow L.B. to regain the peace of mind necessary for the successful continuation of his studies. She specified that the director of the school had been very encouraging about L.B.'s improvement, and that she was reassured by his good grades. She also stated that L.B. had regained the confidence necessary to return to school and had a desire to do well. Following this message, the mediation was ended.

2.12 Owing to the COVID-19 pandemic, schools in Belgium closed on 13 March 2020, and students had to stay at home. L.B. was no longer able to attend the private lessons he had been taking with a tutor outside of school.

2.13 Before the onset of the pandemic, L.B. had been evaluated over the course of three school years. In the first year, he had failed one subject (science). In the second year, he had failed four subjects (science, French, Dutch and geography). In the third year, he had failed two subjects (English and history).

2.14 During the pandemic, L.B.'s academic performance deteriorated. Circular No. 7560 of the Ministry of Education of 30 April 2020 provides that, in order to mitigate any possible injustice felt by students and parents, certain principles should be applied by class councils in respect of internal evaluations and the awarding of certificates. In Belgium, the class council is an ad hoc body chaired by the director of the school or his or her deputy and comprising all the teachers of the student in question. Pursuant to the Ministry of Education's circular, the class council was responsible for deciding whether a student passed or failed the school year; repetition of a school year should be an exceptional measure; postponement would be possible but should also be an exceptional measure; and the decision should be made in consultation with parents and students. L.B.'s school informed his parents that it would apply the standards set out in the circular, indicating that the class council would fail students only in exceptional circumstances.

2.15 On 6 May 2020, the Centre d'Enseignement Secondaire Libre Notre-Dame des Champs sent a notice to all parents stating that the end-of-year examinations had been cancelled because of the pandemic. As a result, the class council would decide whether each student had passed or failed on the basis of the information available to it, including the student's grades/assessments and the extent to which the student had followed classes during the lockdown, taking into account his or her means.

2.16 L.B.'s academic performance deteriorated in his fourth year of schooling; he failed three subjects, namely Dutch, mathematics and science. In its overall evaluation for the fourth year, the school administration considered that L.B. had failed French, Dutch, science, geography and English, which totalled 20 hours of classes, or nearly two thirds of L.B.'s programme. In addition, L.B.'s mathematics teacher noted that, in this subject, L.B. scored 34.5 per cent in the fourth quarter and 48.5 per cent for the full year, but received a grade of F (for "Poor"). The teacher stated that L.B.'s knowledge of mathematics was very poor and possibly insufficient for the fifth year of general education. According to the assessment provided by the geography teacher, L.B. failed because he had not turned in his last assignment, which had been due during the pandemic.

2.17 On 24 June 2020, the class council issued a restricted orientation certificate (attestation d'orientation B (AOB)) in respect of L.B., indicating that he was admitted to the fifth year of secondary education, with the exclusion of the general and transitional technical streams. The class council was of the view that L.B. had insufficient knowledge of French, Dutch, science and geography.

2.18 On 29 June 2020, E.P. appealed the class council's decision to the Appeals Board. She stated that L.B. had been harassed and that he should not have been evaluated during the lockdown, in accordance with circular No. 7560. On the same day, the Appeals Board dismissed the appeal, finding that if L.B. wished to continue in the general education stream, he could repeat his fourth year.

2.19 On 10 July 2020, E.P., represented by private counsel, appealed the decision of the Appeals Board to the Appeals Council of the Wallonia-Brussels Federation, which rejected her appeal on 11 September 2020.

2.20 Subsequently, E.P and L.B., represented by counsel, filed an application with the Council of State, the highest administrative authority in Belgium, to set aside the decision, along with an urgent request to apply provisional suspensive measures. They argued that every passing day risked aggravating the harm caused to L.B. On 5 October 2020, the President of the Eleventh Chamber of the Council of State rejected the request of E.P. and L.B., ruling that there were no flaws in the Appeals Council's assessment of the facts.

2.21 On 1 September 2020, L.B. enrolled in the fifth year of general education at the Lycée Molière in Brussels. In Belgium, students are considered to be non-enrolled ("*élèves libres*") inter alia when they change their course of study during the year, when they do not meet admission requirements (for example, if they register late) or when they do not meet attendance requirements. Non-enrolled students may study at a school but are not entitled to obtain any certificates or diplomas. In the case of L.B., his registration at the Lycée Molière was valid only as a non-enrolled student, unless he obtained an unrestricted certificate of completion in respect of his fourth year of secondary school. According to a letter from Lycée Molière dated 22 February 2021, L.B. was awaiting the outcome of an unspecified appeal. If his appeal was rejected, L.B. would have to take the secondary education examinations organized by the Examination Board before the last day of his sixth year of secondary education, in order to complete his fifth year.

2.22 With regard to the exhaustion of domestic remedies, the authors affirm that they could submit a new application on the merits of their case to the Council of State, since the first appeal they filed was only for interim measures. However, they argue that such an application would never work in practice, since it can be deduced from the case law of the Council of State that the Council would not consider an argument relating to the factual circumstances of L.B.'s academic performance.

2.23 The authors indicate that they have not submitted the same issue for consideration by any other body.

The complaint

3.1 The authors argue that, by the decision of the class council of the Centre d'Enseignement Secondaire Libre Notre-Dame des Champs of 24 June 2020, according to which L.B. completed his fourth year of secondary education with a restriction requiring him to change stream, the State party violated L.B.'s rights under articles 2, 3 (1), 19, 28 (1) (c) and (e) and 29 (1) of the Convention. The class council failed to take account of the factual circumstances surrounding L.B.'s performance during his fourth year of school, in particular the COVID-19 pandemic and the harassment he experienced. In addition, the approach taken by the Centre d'Enseignement Secondaire Libre Notre-Dame des Champs, which assessed students at the end of the school year despite the lockdown, discriminated against pupils in difficulty and from immigrant or disadvantaged backgrounds. Students who have a more stable life and better economic support have more resources to continue their studies in decent conditions when schools are closed. Students in difficulty need the structure of in-person classes, as they often find it difficult to organize themselves. Furthermore, L.B.'s results in the fourth-year examinations, which he had taken while also preparing for his third-year exams, should have been taken into account by the school in its decision.

3.2 The best interests of the child were not taken into account. L.B. has the intellectual capacity for a university education, but the decision of the Council of State prevents him from pursuing the general secondary education that could allow him to enrol in a university. The only option open to him is to repeat the fourth year; however, he may drop out of school if he is required to do that. Those who know L.B. are of the view that he has the intellectual capacity and maturity to study the social sciences or humanities, so long as he is in a calm and caring environment. This situation is very serious for L.B. because his exclusion from the general education stream compromises his plans to study social sciences and has caused him to lose all interest in school and in studying in general.

3.3 Article 28 (1) of the Convention requires that students be given equal opportunities. The Ministry of Education called on schools not to assess students during the COVID-19 pandemic, but L.B.'s school violated this principle. It is also clear that if L.B. had come from

a more prosperous family, allowing him to be home-schooled, he could have achieved better results.

Issues and proceedings before the Committee

Consideration on 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 under the Optional Protocol, whether the communication is admissible under the Optional Protocol.

4.2 The Committee observes that the authors' claims under articles 2, 3 (1), 19, 28 (1) (c) and (e) and 29 (1) of the Convention are based on the decision of the class council that L.B. completed his fourth year of general secondary education at the Centre d'Enseignement Secondaire Libre Notre-Dame-des-Champs with a restriction requiring him to change stream. The Committee notes the authors' allegations that the decision of the class council was unfair and discriminatory, on account of various factors, and that the factual circumstances of L.B.'s life during his fourth year should have been taken into account in the assessment of his academic performance.

4.3 The Committee recalls that it is 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.¹ It is therefore not for the Committee to take the place of the national authorities and assess the facts and evidence, but rather 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.² In the present case, the Committee observes that L.B. had the option, in accordance with the decision of the class council, of enrolling in the technical stream at Notre-Dame des Champs for his fifth year or of repeating his fourth year with a view to remaining in the general education stream. The Committee notes that L.B. chose to leave Notre-Dame des Champs to enrol at the Lycée Molière, where he has been following his fifth year of secondary education, but that he will have to retake his fourth-year examinations in order to remain in the general education stream. It also notes that the documents submitted to the Committee show that the authorities of the Centre d'enseignement secondaire libre Notre-Dame-des-Champs evaluated the performance of L.B. during his fourth year of secondary education based on his academic performance, and that he failed several subjects. The Committee also notes that L.B. did not pass his third year of secondary education, which took place before the COVID-19 pandemic and before the bullying he allegedly suffered, and that he is failing certain subjects at the Lycée Molière, where he is enrolled in the fifth year of secondary education. The Committee considers that, although the authors disagree with the conclusions of the class council and the authorities of the State party, they have not demonstrated that the assessment of the facts and evidence by these authorities was clearly arbitrary or amounted to a denial of justice.

4.4 In the light of the foregoing, the Committee considers that the communication is manifestly ill-founded and accordingly inadmissible under article 7 (f) of the Optional Protocol.

5. The Committee therefore decides:

- (a) That the communication is inadmissible under article 7 (f) of the Optional Protocol;
- (b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.

¹ See, *inter alia*, *L.H.A.N. v. Finland* (CRC/C/85/D/98/2019), para. 7.5.

² *Ibid.*