



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 in respect of communication No. 122/2020* **

<i>Communication submitted by:</i>	M.S. (represented by counsel, Francisco Morenilla Belizón)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	5 August 2020 (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 development; right to special protection and assistance from the State
<i>Articles of the Convention:</i>	3 and 8

1. The author of the communication is M.S., a national of Guinea aged 17 at the time of submission of the communication. He claims that the State party has violated his rights under articles 3 and 8 of the Convention. The Optional Protocol entered into force for the State party on 14 April 2014.

2. On 17 July 2019, the author arrived in Almería after the vessel on which he was travelling was intercepted by the authorities of the State party in the Alboran Sea. He had no documents, but immediately told police that he was born on 7 July 2003. On the same day, the author was placed in the migrant centre run by the Red Cross in Almería. On 18 July 2019, a doctor performed an X-ray on the author and determined his estimated bone age to be more than 18 years according to the Greulich and Pyle atlas, with no standard deviation for this age group. Two months later, on 18 September 2019, the public prosecution service issued an age assessment decree establishing his date of birth as 7 July 2000. The author was never informed of this. Throughout this period, the author had no access to a lawyer, guardian or legal representative.

* 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, Velina Todorova and Benoit Van Keirsbilck.

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



3. On 13 September 2019, following psychosocial tests and having received official documents from Guinea confirming that the author was a minor, the legal services of the Red Cross migrant centre in Almería requested a review of the age assessment decree. During the review process, the public prosecution service summoned the author for a personal interview. On 15 January 2020, a doctor performed a dental X-ray and concluded that his estimated age was 19.7 years, with a standard deviation of 1.1 years. On 21 February 2020, the public prosecution service issued a new age assessment decree establishing that the author was of age, based entirely on the dental X-ray.

4. On 27 June 2020, and in the light of a recent Supreme Court ruling that the original birth certificates of unaccompanied minors constitute full proof of age unless formally challenged by the authorities of the State party, the author again applied to the public prosecution service for a review of the age assessment decree. On 12 June 2020, the author also applied for asylum. However, he was not allowed to file his application because he was a minor. On 19 July 2020, the author voluntarily left the Red Cross migrant centre in Almería and travelled to Barcelona.

5. Pursuant to article 6 of the Optional Protocol, on 6 August 2020, the working group on communications, acting on behalf of the Committee, requested the State party to adopt interim measures, namely by placing the author in a child protection centre pending the Committee's consideration of the communication.

6. On 10 August 2020, the author's counsel submitted further information explaining that, on 7 August 2020, the public prosecution service had determined that the author should be provisionally declared a minor and that the authorities should be notified so that they could provide him with the necessary protection. However, counsel also reported that the author had decided not to return to Almería or to accept the State party's child protection measures.

7. On 3 December 2020, the State party requested the discontinuance of the Committee's consideration of the communication because the author had been formally recognized as a minor and counsel had informed the State party that he did not know the author's whereabouts.

8. At a meeting on 8 February 2022, the Committee noted that the author had been recognized as a minor and had explicitly refused the State party's protection, and that his whereabouts were unknown. Although this development does not in itself amount to full reparation for the alleged violations of the Convention, the Committee, while not endorsing the State party's age assessment procedure, considered that the recognition of the author's status as a minor had rendered communication No. 122/2020 devoid of purpose. The Committee decided to discontinue its consideration of the communication, 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.
