



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. 211/2023*^{**}, ^{***}

<i>Communication submitted by:</i>	R. K. (represented by counsel, Boris Wijkström and Gabriella Tau)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	17 January 2023 (initial submission)
<i>Subject matter:</i>	Removal to Croatia of unaccompanied Burundian child, considered an adult by the Swiss authorities
<i>Substantive issues:</i>	Best interests of the child; right to life; prohibition of torture and ill-treatment; right to health; refugee status; right to education; right to privacy
<i>Articles of the Convention:</i>	3, 8, 12, 16, 20, 22, 24 and 39

1. The author of the communication is R.K., a national of Burundi born on 27 September 2005. He claims to be the victim of violations by the State party of articles 3, 8, 12, 16, 20, 22, 24 and 39 of the Convention. The author is represented by counsel. The Optional Protocol entered into force for the State party on 24 July 2017.

2. The author, who wished to apply for refugee status in Switzerland, first travelled through Croatia, where he was beaten by police on several occasions during migration checks. He concealed his date of birth because his travelling companions advised him to do so, as the Croatian authorities would prevent him from leaving Croatia if he was a minor. On an unspecified date, he received a document asking him to leave Croatia within seven days. The author passed through Slovenia and then applied for asylum in Switzerland on 3 October 2022; he was then aged 17 years.

* Adopted by the Committee at its ninety-fifth session (15 January–2 February 2024).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aïssatou Alassane Moulaye, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rinchen Chopel, Rosaria Correa, Bragi Gudbrandsson, Sopi Kiladze, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, 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. In Switzerland, the author first gave the migration authorities the same false date of birth that he had used in Croatia. In the account included in his file, there were also misunderstandings about his nationality, as the author was not assisted by an interpreter. He therefore provided the State Secretariat for Migration with his birth certificate and identity card and requested that his nationality and age be corrected. On 1 December 2022, the State Secretariat stated that the determination of the author's age would be taken into account as part of the decision on the Dublin III Regulation application procedure¹ and not as a separate decision.

4. On 16 December 2022, the author lodged an appeal with the Federal Administrative Court for denial of justice, as he had been deprived of his rights as a child and placed in an adult home because his age had been registered incorrectly. On 27 December 2022, the Court handed down its interim decision, in which it found that the appeal had no chance of success as the author was not entitled to an immediate decision on the question of his age and that, consequently, the approach taken by the migration authority could not be considered dilatory and did not give rise to an unjustified delay. In view of this conclusion, the Court made the issuance of a decision on the merits conditional on payment of 750 Swiss francs. In the absence of payment, the Court would issue a final decision of inadmissibility and dismiss the claim. The author, who was destitute, was unable to make the payment.

5. On 19 January 2023, in accordance with article 6 of the Optional Protocol, the Working Group on Communications, acting on behalf of the Committee, requested the State party to transfer the author to a child protection centre until either his age had been determined or he had reached the legal age of majority on the basis of his identity documents.

6. On 30 January 2023, the State party submitted its observations on the interim measures, in which it informed the Committee that the State Secretariat for Migration had overturned the Court's decision not to consider the merits of the appeal, that the author's date of birth was accepted to be 27 September 2005 and that he had been transferred to a home for minors. The State party requested that, following its positive response to the request for interim measures, the Committee discontinue its consideration of the communication.

7. On 6 April 2023, the author submitted his comments on the State party's observations. He points out that, on 23 February 2023, the forensic expert found his minimum age to be 17.38 years and that the State party did not take this medical assessment into account as it did not immediately transfer him to a home for minors. On 20 March 2023, the State Secretariat for Migration ordered the author's removal to Croatia. In its decision of 29 March 2023, the Federal Administrative Court subsequently granted a stay of execution of the author's removal to Croatia, but did not order his transfer to a home for minors.

8. On 7 June 2023, the author reiterated to the Committee his request for interim measures, namely asking the State party not to deport him to Croatia on 12 June 2023, for the duration of the ongoing proceedings and until such time as the national authorities had reached a conclusion on the determination of his age.

9. On 9 June 2023, the State party suspended the author's removal to Croatia and gave assurances that he could reside in Switzerland while his case was being examined by the Committee. On 14 June 2023, the State party indicated that the author had not been resident in Switzerland since 30 May 2023. On 15 September 2023, the State party requested the Committee to discontinue its consideration of the communication. On 19 September 2023, the author informed the Committee that he also wished it to discontinue its consideration of the communication.

¹ Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless person.

10. At a meeting on 26 January 2024, given that the author had requested the Committee to discontinue its consideration of the communication, the Committee decided to accede to that request in respect of communication No. 211/2023 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.
