



# 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. 164/2021\* \*\* \*\*\*

<i>Communication submitted by:</i>	Y.M. (represented by counsel, Minh Son Nguyen)
<i>Alleged victim:</i>	D.O.
<i>State Party:</i>	Switzerland
<i>Date of communication:</i>	7 October 2021 (initial submission)
<i>Subject matter:</i>	Return of a child with cerebral palsy and his mother to Ukraine
<i>Substantive issues:</i>	Best interests of the child; right to life; right to health
<i>Articles of the Convention:</i>	3, 6 and 24

1. The author of the communication is Y.M., a Ukrainian national born on 6 March 1985. She submits the communication on behalf of her son, D.O., a Ukrainian national born on 27 January 2015. The author claims that, by returning D.O. to Ukraine, the State party would be violating his rights under articles 3, 6 and 24 of the Convention. She is represented by counsel. The Optional Protocol entered into force for the State party on 24 July 2017.

2. On 9 January 2019, the author and D.O. entered Switzerland. On 21 January 2019, the author filed an asylum application on her own behalf and on behalf of D.O. By decision of 14 June 2019, the State Secretariat for Migration rejected the asylum application and ordered their removal.

3. Having diagnosed D.O. with cerebral palsy, perinatal hypoxic ischaemic encephalopathy and multifactorial learning difficulties, the doctors and specialists treating him recommended that he remain in Switzerland so that his medical care could continue. On 7 October 2020, the author submitted a request for review of the asylum application submitted on behalf of D.O., claiming that her son's state of health would render the return order unenforceable within the meaning of article 83 (4) of Federal Law No. 142.20 of

\* Adopted by the Committee at its ninety-sixth session (6–24 May 2024).

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

\*\*\* In accordance with 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.



16 December 2005 on Foreign Nationals and Integration. By decision of 18 November 2020, the State Secretariat for Migration dismissed the request for review on the grounds that the treatment D.O. was receiving did not constitute essential care within the meaning of domestic case law and that he had already received rehabilitative care in Ukraine.

4. On 23 December 2020, the author appealed against the State Secretariat for Migration's decision to dismiss her request, maintaining that the medical and paramedical care that D.O. was receiving in Switzerland was indispensable given his state of health, that he needed a stable environment to ensure his personal development, and that the medical practitioners responsible for his care agreed that a return to Ukraine was contraindicated. By ruling of 29 March 2021, the Federal Administrative Court dismissed the appeal, upholding the reasoning of the State Secretariat for Migration.

5. On 22 November 2021, the Committee, acting through the Working Group on Communications, decided to register the communication and not to submit to the State party a request for interim measures under article 6 of the Optional Protocol and article 7 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child establishing a communications procedure.

6. In its observations of 2 May 2022, the State party informed the Committee that, on 27 April 2022, the State Secretariat for Migration had granted provisional admission to Switzerland to the author and D.O. As there was no risk of their being returned to Ukraine owing to the situation in that country, the State party requested the Committee to remove the case from its list.

7. At its meeting on 24 May 2024, the Committee, having considered the State party's request that consideration of the communication be discontinued, noted that a decision on provisional admission to Switzerland had been taken in favour of the author and D.O. and that they were therefore no longer at risk of being returned to Ukraine. Considering that the decision to grant D.O. provisional admission rendered the communication without purpose, the Committee decided to discontinue its consideration, 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.

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