



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Communication No. 1/2014


#### Decision adopted by the Committee at its sixty-ninth session (18 May–5 June 2015)

<i>Subject matter:</i>	Determination of age within proceedings to grant special protection to a child deprived of his family environment
<i>Procedural issues:</i>	Committee's competence <i>ratione temporis</i>
<i>Articles of the Convention:</i>	Article 3, in conjunction with articles 18 (2) and 20 (1), and articles 8, 20, 27 and 29
<i>Articles of the Optional Protocol:</i>	Article 7 (g)

GE.15-11335 (E)



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## Annex

### **Decision of the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (sixty-ninth session)**

concerning

#### **Communication No. 1/2014\***

*Submitted by:* A.H.A. (represented by counsel, Albert Parés Casanova of *Collectiu Iuris* and *Associació Noves Vies*)

*Alleged victim:* The author

*State party:* Spain

*Date of communication:* 23 September 2014

*The Committee on the Rights of the Child*, established under article 43 of the Convention on the Rights of the Child,

*Meeting* on 4 June 2015,

*Having concluded* its consideration of communication No. 1/2014, submitted to it under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,

*Adopts* the following:

#### **Decision on admissibility**

1. The author of the communication is A.H.A., a national of Ghana, who submits that he was born on 24 July 1994. The author claims that he is the victim of a violation by the State party of his rights under article 3, in conjunction with articles 18 (2) and 20 (1), and articles 8, 20, 27 and 29, of the Convention.<sup>1</sup> The author is represented by counsel.

#### **Facts as submitted by the author**

2.1 After his arrival in Spain, the author was reported by the police as an unaccompanied minor. On 24 October 2010, the General Directorate for the Protection of Children and Adolescents opened proceedings in order to declare that the author was

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\* The following members of the Committee participated in the consideration of the present communication: Amal Salman Aldoseri, Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Bernard Gastaud, Peter Gurán, Olga A. Khazova, Hatem Kotrane, Benyam Dawit Mezmur, Yasmeeen Muhamad Shariff, Clarence Nelson, Wanderlino Nogueira Neto, Sara de Jesús Oviedo Fierro, José Angel Rodríguez Reyes, Kirsten Sandberg and Renate Winter. Pursuant to rule 8, paragraph 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, Committee member Jorge Cardona Llorens did not participate in the consideration of the communication.

<sup>1</sup> The Optional Protocol to the Convention on the Rights of the Child on a communications procedure entered into force for the State party on 14 April 2014.

abandoned and in need of protection by the State authorities. However, medical examinations concluded that he was at least 19 years old. Accordingly, on 16 November 2010, the author was informed by the General Directorate that he was not entitled to State protection, as it had been established that he was an adult.

2.2 The author challenged the General Directorate's decision before the Court of First Instance No. 18 of Barcelona. He claimed that he was a minor and that his date of birth was 24 July 1994, as indicated on his birth certificate and in the passport issued by the consulate of Ghana in Madrid on 21 December 2010, and that he was thus entitled to State protection. On 22 July 2011, the Court dismissed his application.

2.3 The author lodged an appeal against the decision of Court No. 18. On 5 October 2011, the Provincial Court of Barcelona dismissed the author's appeal. On 5 November 2012, he submitted a further application for appeal in cassation to the Supreme Court. On 17 September 2013, the Supreme Court declared that appeal inadmissible.

### **Complaint**

3.1 The author claims that the State party violated his rights under article 3, in conjunction with articles 18 (2) and 20 (1), and articles 8, 20, 27 and 29 of the Convention.

3.2 The author claims that the authorities arbitrarily refused to recognize him as a minor and disregarded the date of birth stated in his passport although they never objected to the validity of that document. The medical examinations carried out by the authorities to determine his age were neither conducted by an experienced physician nor did they include the appropriate technology and tests for age assessment.<sup>2</sup> Moreover, the author claims that medical tests to determine a person's age should be conducted only when a person has no documentation that indicates his or her date of birth or age.

3.3 The decision of the State party's authorities deprived the author of his entitlement to the State party's protection as a minor, causing him ongoing harm.

### **Issues and proceedings before the Committee**

#### *Consideration of 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 on a communications procedure, whether the communication is admissible.

4.2 The Committee takes note of the author's allegations that on 16 November 2010 the General Directorate for the Protection of Children and Adolescents concluded that he was not a minor and informed him that he was not entitled to child protection; that subsequently his judicial applications against that decision were all dismissed; and that on 17 September 2013 the Supreme Court declared inadmissible his appeal in cassation. The Committee observes that all the facts referred to in the communication, including the judicial decision in last instance, occurred prior to 14 April 2014, the date of entry into force of the Optional Protocol for the State party. Accordingly, the Committee concludes that, pursuant to article 7 (g) of the Optional Protocol, it is precluded *ratione temporis* from examining the present communication.

<sup>2</sup> The author refers to the United Nations Children's Fund, *Ni ilegales ni invisibles. Realidad jurídica y social de los menores extranjeros en España* (2009).

5. The Committee therefore decides:
    - (a) That the communication is inadmissible under article 7 (g) of the Optional Protocol;
    - (b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.
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