



# Convention on the Rights of the Child

## Advance unedited version

Distr.:General  
13 October 2020

Original: English

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### Committee on the Rights of the Child

## Follow-up progress report on individual communications\*

### A. Introduction

The present report is a compilation of information received from States parties and complainants on measures taken to implement the Views and recommendations on individual communications submitted under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. The information has been processed in the framework of the follow-up procedure established under article 11 of the Optional Protocol and rule 28 of the rules of procedure under the Optional Protocol. The assessment criteria were as follows:

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#### *Assessment criteria*

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- A** Compliance: Measures taken are satisfactory or largely satisfactory
  - B** Partial compliance: Measures taken are partially satisfactory, but additional information or action is required
  - C** Non-compliance: Reply received but measures taken are not satisfactory or do not implement the Views or are irrelevant to the Views
  - D** No reply: No cooperation or no reply received
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\* Adopted by the Committee at its eighty-fifth session (14 September 2020 – 1 October 2020).



## B. Communications

*D.D. v. Spain* (CRC/C/80/D/4/2016)

Views adopted:	1 February 2019
Subject matter:	Deportation of a Malian unaccompanied child from Spain to Morocco. The author claimed that he was summarily deported to Morocco without being subjected to any form of identity check or assessment of his situation, which exposed him to the risk of violence and cruel, inhuman and degrading treatment in Morocco.
Articles violated:	Articles 3, 20 and 37 of the Convention
Remedy:	The State party is under an obligation to provide the author with adequate reparation, including financial compensation and rehabilitation for the harm suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by revising the Organic Act No. 4/2015 of 1 April 2015 on safeguarding the security of citizens. The State party is requested to revise the tenth additional provision of that law, on the special regime applicable in Ceuta and Melilla, which would authorize its practice of indiscriminate automatic deportations at the border. The State party is also requested to publish the Views and to have them widely distributed.
State party's response:	In its submission dated 12 August 2019, the State party observes that the Directorate General for International Legal Cooperation, Interfaith Relations and Human Rights assumed new responsibilities in August 2018 for "the best promotion of human rights by ensuring their effectiveness through the proposal of measures, which takes into account the decisions of the international bodies competent to safeguard human rights". It includes among its specific functions "the proposal of normative measures or administrative practices to address the issues repeatedly highlighted in the opinions to Spain by the human rights treaty bodies whose competence to consider individual communications has been accepted by Spain" (Royal Decree No. 1044/2018 of 24 August 2018 developing the basic organizational structure of the Ministry of Justice).  The State party notes that the Directorate is currently considering the measures that should be adopted in order to implement the recommendations of the Committee. It also notes that, due to the political situation in the State party, pending the establishment of

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*D.D. v. Spain* (CRC/C/80/D/4/2016)

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new government administrations at the central, regional and local levels, the process is currently delayed. The State party requests that the Committee extend the deadline for reporting on the measures taken to comply with the decision until the new government administrations are established. The State Party nevertheless will undertake to report back to the Committee on the state of the follow-up to the Views before 31 December 2019.

Author's comments:

In his comments dated 11 November 2019, the author notes that, on 31 July 2019, a request for reparation was submitted to the Subdirectorate for International Legal Cooperation, within the Ministry of Justice of Spain, to no avail.

The author also draws attention to a shadow report submitted in the context of the universal periodic review of the State party, jointly by Fundación Raíces, the European Center for Constitutional and Human Rights and the Spanish organization Andalucía Acoge, which focuses on the continued practice of summary expulsions at the Ceuta and Melilla land borders with Morocco. The author adds that, in the past six months, there have been three instances in which indiscriminate summary group expulsions, with no assessment regarding the possible presence of unaccompanied minors within the groups, have taken place: on 16 May 2019, 15 unidentified persons were reported to have been returned to Morocco from Melilla, on 19 July 2019, 25 persons were returned also from Melilla to Morocco and, on 30 August 2019, seven persons were returned from Ceuta to Morocco.

Decision of the Committee:

The Committee decides to maintain the follow-up dialogue and to request regular updates from the State party on the status of implementation of the Committee's Views. The State party's compliance with the Views will be assessed in the light of future information from the State party and the author's comments in that regard.

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*N.B.F. v. Spain* (CRC/C/79/D/11/2017)

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Views adopted:

27 September 2018

Subject matter:

The author arrived in Spain aboard a boat, claiming to be an unaccompanied migrant child. Since he was undocumented, he was subjected to a test consisting of an X-ray of his left hand to determine his age using the Greulich and Pyle method. The result of the test showed that he was over 19 years of age. He claimed that the test was inaccurate

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*N.B.F. v. Spain* (CRC/C/79/D/11/2017)

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- and inappropriate and that no representative was appointed for him during the age-determination process.
- Articles violated: Articles 3 and 12 of the Convention and article 6 of the Optional Protocol
- Remedy: The State party is under an obligation to prevent similar violations in the future, in particular by ensuring that all procedures for determining the age of possible unaccompanied children are carried out in a manner consistent with the Convention and that, in the course of such procedures, the persons subjected to them are promptly assigned a qualified legal or other representative free of charge. The State party is requested to publish the Views and disseminate them widely.
- State party's response: In its follow-up submission dated 20 May 2019, the State party notes that, on 18 December 2018, the Attorney General's Office issued a detailed report on the rules and administrative practices currently followed with respect to the matters indicated by the Committee, highlighting the aspects in which the Committee had requested effective measures to prevent similar violations in the future. The report was sent to the Directorate General for International Legal Cooperation, Interfaith Relations and Human Rights, of the Ministry of Justice, which took the following action:
- (a) The content of the Views were disseminated publicly, on the website of the Ministry of Justice;
  - (b) Given that the implementation of the Views is the responsibility of various organs of the public Administration, a permanent network of focal points within the different institutions was formed in order to analyse the complex aspects that compliance requires;
  - (c) On 21 January 2019, a meeting with experts and State ministries was convened in order to evaluate the Views and the possible measures that would be required for implementation, including:
    - (i) a review of the different problems faced by each participating unit, in view of the growing number of unaccompanied foreign minors illegally crossing the border; and
    - (ii) a review of the treatment of those migrants, in particular age-determination procedures, appointment of a legal representative and referral to child protection centres.

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*N.B.F. v. Spain* (CRC/C/79/D/11/2017)

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On 5 March 2019, the Spanish parliament was dissolved. The State party developed a plan of action to implement the Views after the general elections, which were due to be held in April and May 2019. The State party intends to convene a sectoral conference between the autonomous regional governments in order to ensure coordination on regulatory initiatives and administrative measures. In addition, prior to any adoption of normative or administrative practice and the evaluation of the normative impact thereof, the Government is planning to consult with and take into consideration the position of all the autonomous communities with broad territorial competences in their respective spheres. It also expects to consider the promotion of legislative measures, regulations and modifications of protocols of action at the national level, in coordination with the measures adopted at the autonomous community level. The State party is planning a budgetary and financial impact analysis of the required measures and the logistical and administrative procedures necessary to implement them.

Author's comments:

In his comments dated 7 August 2019, the author contends that there have been no judicial or administrative changes following the adoption of the Committee's Views. He challenged the State party's statement that the Views were widely disseminated and notes that, while there is a permanent link to the United Nations website on the government's website, the State party should have expressly informed all relevant agencies about the Views, including the Public Prosecutor's Office, the regional authorities with competence on the protection of children, law enforcement bodies, administration of justice entities, the school of social educators, social entities, forensic doctors and bar associations across the State party. He adds that the State party's response only contains information on meetings that have resulted in no concrete result or change in practice.

Decision of the Committee at its eighty-second session:

The Committee recognizes the positive efforts made by the State party subsequent to receiving the Views. Due to the complexity of the issue and the number of cases received against Spain, the Committee decides to maintain the follow-up dialogue and to request regular updates from the State party on the status of implementation of the Committee's Views. The State party's compliance with the Views will be assessed in the light of future information from the State party and the author's comments in that regard.

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*N.B.F. v. Spain* (CRC/C/79/D/11/2017)

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State party's second response:

In its submission dated 23 December 2019, the State party informs the Committee that several measures are being undertaken to update the Protocol regulating State actions regarding unaccompanied foreign minors. To that effect, an international coordination board has been established and is currently assessing proposals from the central and regional administrations. A high-level working group on unaccompanied foreign minors has also been established within the Ministry of Health. The working group has held several meetings with civil society representatives.

The Public Prosecutor's Office is assessing the possibility of verifying identity documents with consular authorities present in the State party. The Office only considers as relevant photocopies of passports or equivalent identity documents.

The State party notes that age-determination decrees issued by the Public Prosecutor's Office are not administrative acts. Nevertheless, the Supreme Court decided on 24 June 2019 to admit a complaint to determine whether the Administrative courts should be competent to process appeals against such decrees. In its decision, the Supreme Court referred to the Committee's Views in *N.B.F. v. Spain*.

The State party reports that, in 2019, the Centre for Legal Studies, within the Ministry of Justice, has convened seven training activities on migration and human trafficking for members of the judiciary. The body responsible for forensic studies has also received training on forensic science and human rights and on age determination. The Ministry of the Interior has conducted five training activities for members of security forces on the issue of unaccompanied migrant children.

The State party acknowledges that the provisional Government is late in undertaking the administrative and political measures required to implement the Views. On 3 December 2019, a new parliament was established, and on 3 May, regional and municipal elections were held. Once all levels of government have been established: (a) the State party will coordinate relevant normative and administrative measures; (b) the high-level working group and the coordination board will continue their respective work with a view to updating and improving the Protocol regulating State actions regarding unaccompanied foreign minors; (c) the Public Prosecutor's Office will continue to take the initiative to consult with consular authorities to verify the

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*N.B.F. v. Spain* (CRC/C/79/D/11/2017)

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authenticity of identity documents; (d) capacity-building for all relevant State actors will continue; and (e) a possible increase in free legal aid will be explored, with a view to including it in the public budget for 2020.

Decision of the Committee: The Committee decides to maintain the follow-up dialogue and to request a meeting with the State party in order to discuss the prompt implementation of the Committee's Views.

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*A.L. v. Spain* (CRC/C/81/D/16/2017)

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Views adopted on: 31 May 2019

Subject matter: Age determination of an unaccompanied migrant child subjected to assessment using the Greulich and Pyle method.

Articles violated: Articles 3, 8, 12, 18 (2), 20, 27 and 29 of the Convention

Remedy: The State party should provide the author with adequate reparation. The State party is also under an obligation to prevent similar violations in the future by ensuring that all procedures for determining the age of possible unaccompanied children are carried out in a manner consistent with the Convention and, in particular, that in the course of such procedures they are granted prompt access to a qualified representative free of charge. The State party is requested to publish the Views and to disseminate them widely.

State party's response: See the State party's response of 23 December 2019 with regard to *N.B.F. v. Spain* above.

Author's comments: In his comments of 6 March 2020, the author notes that, on 3 December 2019, he requested the Subdirectorate for International Legal Cooperation to open a file to study and implement the Committee's Views. The author notes that the State Attorney's report of 28 June 2019 has not been made public and therefore he does not know how the State party purports to implement the Views. He adds that the State party's response refers to general measures but does not include any information of measures undertaken to provide the author with specific reparations. The author has learned that the Ministry of Health is working on a new model to assist unaccompanied migrant children, but it has not yet been implemented.

The author reports that the Public Prosecutor's Office continues to disregard documents submitted by unaccompanied

*A.L. v. Spain* (CRC/C/81/D/16/2017)

children, such as birth records, and, in some cases, even passports, which are deemed unreliable without consulting the relevant consulates or embassies. The same medical tests are being practised, without any psychological test and without including an age-deviation margin in the results. The Public Prosecutor’s Office accepts those reports without questioning their validity. In short, national authorities continue to operate without giving children the benefit of the doubt, presuming that they are underage or taking their best interests into account. Whenever children file a judicial application to request interim measures of protection, the Public Prosecutor’s Office opposes the granting of such measures of protection, and the courts deny them.

As to the possibility of appealing the age-determination decrees, the State party has repeatedly admitted that such decrees are not subject to appeal, and this continues to be the practice. The Constitutional Court of Spain has recently dismissed several writs of *amparo*, in which the victims alleged a violation of access to justice based on the impossibility to file a judicial appeal against age-determination decrees. The Supreme Court has yet to determine whether an appeal is possible and, if so, the relevant jurisdiction.

Decision of the Committee:

The Committee decides to maintain the follow-up dialogue and to request a meeting with the State party in order to discuss the prompt implementation of the Committee’s Views.

*J.A.B. v. Spain* (CRC/C/81/D/22/2017)

Views adopted on:

31 May 2019

Subject matter:

Age determination of unaccompanied migrant child subjected to assessment using the Greulich and Pyle method.

Articles violated:

Articles 2, 3, 6, 8, 12, 18 (2), 20 (1), 24 and 29 of the Convention and article 6 of the Optional Protocol

Remedy:

The State party must provide the author with effective reparation for the violations, including the provision of the opportunity for the author to regularize his administrative situation. In addition, the State party is under an obligation to prevent similar violations in the future, in particular by ensuring that all procedures for determining the age of possible unaccompanied children are carried out in a manner consistent with the Convention and that, in the course of such procedures, the documentation submitted by



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*J.A.B. v. Spain* (CRC/C/81/D/22/2017)

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the persons subjected to them is taken into consideration and that those persons are promptly assigned a qualified legal representative free of charge or that their freely designated lawyers are recognized. The State party is requested to publish the Views and disseminate them widely.

State party's response:

See the State party's response of 23 December 2019 with regard to *N.B.F. v. Spain* above.

Author's comments:

In his comments dated 6 March 2020, the author notes that, during the entire time when he was not recognized as a minor, he was not able to request his administrative regularization. Pursuant to article 35 of Organic Law 4/2000 of 11 January 2000 on the rights and liberties of foreigners in Spain and their social integration, in order to obtain a non-lucrative residence, you must have been under the protection of a public entity (in this case, the Community of Madrid). On 30 November 2018, the author requested an authorization of temporary residence based on exceptional circumstances. His request was granted until 5 June 2020. However, the authorization is not a residence authorization, to which he would have been entitled had he been recognized as a minor and put under the protection of the Community of Madrid at the time of his arrival. By decision of 31 May 2019 of the Provincial Court of Madrid, the author should have been subject to protection, with all the relevant legal effects. On 10 October 2019, the author requested that the effects of that decision be applied retroactively and that a residence authorization be issued by the Government of Madrid.

The author notes that, on 3 December 2019, he requested the Subdirectorate for International Legal Cooperation to open a file to study and implement the Committee's Views. The author notes that the State Attorney's report of 28 June 2019 has not been made public and therefore he does not know how the State party purports to implement the Views. He adds that the State party's response refers to general measures but does not include any information of measures undertaken to provide the author with specific reparations. The author has learned that the Ministry of Health is working on a new model to assist unaccompanied migrant children, but it has not yet been implemented.

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