

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. 177/2022 **,***

<i>Communication submitted by:</i>	Gi.C. et al. (Represented by counsel Giorgia Camerata)
<i>Alleged victims:</i>	Gi.C., Ga.C., B.C., C.C., G.M., A.M., A.M., A.L.T., D.P., A.P., M.R.
<i>State party:</i>	Italy
<i>Date of communication:</i>	12 February 2022
<i>Date of decision</i>	26 May 2025
<i>Subject matter:</i>	Covid-19 vaccination requirements for children over the age of 12, limiting their possibility to access school and other educational, cultural, sporting, recreational, and professional activities.
<i>Procedural issue:</i>	<i>Ius Standi</i> , victim status
<i>Substantive issues:</i>	Child's best interests; non-discrimination.
<i>Articles of the Convention:</i>	27.1, 28, 29.1 and 31.
<i>Articles of the Optional Protocol:</i>	5 (1)

1.1 The authors of the communication dated 12 February 2022 are Gi.C., born on 11 May 2005, Ga.C., born on 28 March 2009, B.C., born on 27 March 2010, C.C., born on 26 October 2009, G.M., born on 10 September 2009, A.M., born on 13 August 2006, A.L.T., born on 29 January 2010, D.P., born on 5 February 2008, A.P., born on 24 September 2008 and M.R. born on 19 February 2009. The authors claim they are victims of violations by the State party of articles 27.1, 28, 29.1, and 31 of the Convention. The authors are represented by counsel, Ms Giorgia Camerata. The Convention and the Optional Protocol entered into force for the State party on 5 September 1991 and 4 February 2016 respectively.

1.2 On 3 March 2022, under Article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, rejected the author's request for interim

* Adopted by the Committee at its ninety-ninth session (12-30 May 2025).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rinchen Chopel, Rosaria Correa, Tomothy P.T. Ekesa, Bragi Gudbrandsson, Mariana Ianachevici, Philip Jaffé, Sopia Kiladze, Cephas Lumina, Faith Marchall-Harris, Benyam Dawit Mezmur, Aissatou Alassane Sidikou, Juliana Scerri Ferrante, Zeinebou Taleb Moussa and Benoit Van Keirsbilck.

*** An individual opinion by Committee member Benoit Van Keirsbilck (dissenting) is annexed to the present decision.

measures and invited the State party to submit its observations on the admissibility and merits of the communication.

Factual background

2.1 Between April 2021 and February 2022, to counter the COVID-19 pandemic, the State party adopted emergency legislation,¹ which required that children above the age of 12 hold a “super green pass”² in order to access school premises or participate in educational, cultural, sporting, recreational, and professional activities. Following this legislation, children and adolescents above the age of 12 who could not prove full vaccination against COVID-19 were unable inter alia to practice team or individual sports activities, including outdoors; use public transportation; participate in cultural activities or enter libraries; participate in school outings which include overnight stays or meals; and visits to a museum or other cultural centres.

2.2 The authors state that children and adolescents over 12 years who are not fully vaccinated against COVID-19 or do not have proof of recent recovery from an infection may be required to participate in distance learning and quarantine in certain cases. In contrast, fully vaccinated children face no restrictions regarding in-person attendance to school.

2.3 The authors further assert that multiple reports have analyzed the “discriminatory and harmful nature” of the State party’s legislation. A 2020 Parliamentary report by the National Authority for Children and Adolescents highlights the negative impact of the pandemic on youth mental health, citing restrictions on fundamental rights related to education, socialization, recreation, and sports. Since the first wave of COVID-19, the National Authority for Children and Adolescents has repeatedly warned the State party’s government about the harm caused by these restrictions and has urged the implementation of protective measures for children and adolescents.

Exhaustion of domestic remedies

2.4 According to the authors, no effective domestic remedies were available to them. They argue that the State party’s legal system does not permit individuals to challenge a law directly but only allows them to contest enforcement decisions that personally affect them. To date, the authors have not been subject to any individual enforcement decisions related to the State party’s “anti-COVID” legislation. They further assert that the inability to enroll in cultural, sporting, or recreational activities does not constitute an enforcement decision that could be contested in a domestic court, thereby rendering any judicial remedy unavailable.

2.5 The authors formally submit that, even if a theoretical legal avenue were available, it would have been neither accessible nor effective in practice. Under the State party’s legal framework, individuals are not permitted to challenge statutes and bylaws directly, as only the Constitutional Court holds the authority to determine whether a law is unconstitutional. The authors emphasize that the sole mechanism for contesting the lawfulness of a statute is through judicial proceedings, wherein a judge may refer the matter to the Constitutional Court. However, in the present case, the absence of an enforceable administrative act deprived the authors of any legal basis to initiate such proceedings, effectively denying them access to justice.

2.6 Additionally, the authors submit that filing lawsuits against sports or cultural entities that refused to enroll unvaccinated children and adolescents over 12 years old would have been impractical. As stated by the authors, such legal actions would have involved an excessively long process, disproportionate to the urgency and temporary nature of the “anti-COVID-19” legislation. Furthermore, the authors claim that initiating such legal proceedings is financially burdensome, procedurally complex, and ultimately futile, as no domestic legal remedy could have provided timely relief from the discriminatory effects of the legislation.

¹ Legislative Decrees (L.D.) 22.04.2021 n. 52, as amended by L.D. 23.07.2021 n. 105, L.D. 21.09.2021 n. 127, L.D. 08.10.2021 n. 139, L.D. 26.11.2021 n. 172, L.D. 24.12.2021 n. 221, L.D. 30.12.2021 n. 229, L.D. 07.01.2022 n. 1 et L.D. 04.02.2022 n.5

² This refers to the certificate of vaccination against COVID-19 with a validity of 6 months since the recovery or the last vaccine dose.

The complaint

3.1 The authors claim that the State party's legislation to counter the COVID-19 pandemic violates their rights under articles 27 (1), 28, 29 (1), and 31 of the Convention.

3.2 The authors claim that the State party's legislation discriminates on the basis of age between children and adolescents. At the age of 12, unvaccinated children, who could previously freely access everything, are now excluded from social, cultural, sports, and recreational activities, and also face unequal treatment regarding in-person schooling. The authors further claim that children and adolescents above the age of 12 are being treated as adults.

3.3 The authors claim that the State party's legislation goes against every child's right to physical, mental, spiritual, moral, and social development, their right to education directed to the development of their personality, and their right to leisure.

State party's observations on admissibility

4.1 On 22 May 2022 and 5 September 2022, the State party submitted its observations on the admissibility and merits of the complaint.³ It submits that the communication should be found inadmissible for lack of victim status to present the communication and for lack of sufficient substantiation.

4.2 Regarding the authors' lack of victim status, the State party contends that the authors have failed to demonstrate the nexus between the violation of the rights and freedoms and the direct intention to restrict those rights following the adoption of emergency decrees, without paying attention to necessity, proportionality, and temporality. The State party asserts that, on 31 January 2020, the Council of Ministers declared a state of national emergency in response to the health risks posed by the outbreak of transmissible viral diseases. This state of emergency was subsequently renewed under constitutional provisions. The State party emphasizes that the balance between rights and duties is a fundamental principle in the legal interpretation of the Basic Law, even during crises such as a public health emergency, particularly when caused by a global pandemic. It further argues that this balance must be sought with due consideration for the right to health—a collective interest—which may necessitate certain restrictions of other fundamental rights. According to the State party, a limitation of rights and freedoms is permissible if it is provided for by law, is imposed in pursuit of legitimate aims, and if is necessary in a democratic society for the pursuit of these aims or based on a reasonable balance and proportionality between the measure imposed and the aim pursued.⁴

4.3 The State party maintains that all legislative measures, -ordinary and extraordinary-, were adopted and implemented in full compliance with international standards. It asserts that, throughout the pandemic, the competent health authorities took all necessary and appropriate measures to safeguard the health and well-being of children and adolescents. Additionally, targeted economic, social, and cultural support measures were introduced to assist families and communities as health risks diminished. The State party contends that no student was deprived of the right to education, as learning was ensured through the implementation of Distance Learning and Integrated Digital Learning. Furthermore, it states that the requirement to hold a "green pass" or "reinforced green pass" did not prevent pupils or students from accessing education at any level.

4.4 The State party further submits that the communication is inadmissible because the authors failed to demonstrate a current and direct infringement of their right to education and study, mobility, freedom of association, and assembly. According to the State party, the authors failed to demonstrate the prejudice suffered by the authors and whether they experienced any restriction on access to school or leisure activities. Furthermore, the State

³ For the purposes of the present decision, only the State party's observations on admissibility will be reflected. See CRC/C/88/D/108/2019, para. 4.1.

⁴ State party quotes for reference ECHR, *Solomakhin v. Ukraine*, n. 24429/03, 15 March 2012; *Hristozov et al. v. Bulgaria*, nn. 47039/11 and 358/12, 2021; Grand Chamber, ruling 8 April 2021, and cases nn. 47621/13, 3867/14, 73094/14, 19306/15, 19298/15, 43883/15.

party states that, if this had been the case, it would have been possible for the authors to contest legal measures before the competent judicial authorities.

Author's comments on the State party's observations on admissibility

5.1 In their comments dated 17 January 2023, the authors reiterate that children from the age of 12 children and adolescents who were not in possession of the so-called "Green Pass Strengthened", could not: practice sports, team activities and not, even outdoors; use public transport; participate in cultural activities; access to cultural, social and recreational centres, not even outdoors; participate in congressional activities, not even outdoors; participate in school education visits, where it is planned to stay and/or eat in accommodation facilities, enter museums, exhibitions and places of culture in general; participate in school activities in presence. The authors contend that these considerations suffice to prove the serious prejudices suffered not only by them but by all children and adolescents over 12 years in the State party, who could not prove that they had completed the vaccination cycle or that they were healed for no more than 120 days.

5.2 The authors argue that the State party failed to demonstrate that the difference in treatment was objectively and reasonably justified. The authors further assert that the restrictive measures imposed to contain the spread of COVID-19 created anomalous and unforeseen developmental conditions for adolescents, significantly impacting their growth and well-being.

Issues and Proceedings before the Committee

Considerations of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

6.2 The Committee takes note of the State party's argument that the authors failed to demonstrate a current and direct infringement of their Convention rights and a prejudice suffered by them, such as whether they experienced any restriction on access to school or leisure activities. Furthermore, the State party states that, if this had been the case, it would have been possible for the authors to contest legal measures before the competent judicial authorities at the domestic level.

6.3 At the same time, the Committee notes the authors' claims that the mere existence of these laws, applicable to all children over 12, suffice to justify a violation of their rights under articles 27.1, 28, 29.1 and 31 of the Convention.

6.4 The Committee considers that it cannot assess abstract challenges to national laws or *actio popularis*. Rather, individuals or groups of individuals bringing a communication under the Optional Protocol and claiming to be victims of violations of the Convention or its two substantive Optional Protocols must demonstrate that their rights have been actually impaired, by act or omission of the State party, or that such impairment is imminent.⁵ In the present case, the Committee notes that, as children over the age of 12 at the time that the cited legislation was adopted, the authors were in the category of persons that the law could be applied to. However, the Committee observes that the authors have failed to provide any information as to how these emergency and temporary measures impacted the enjoyment of their Convention rights individually⁶ and therefore failed to demonstrate any personal, real and significant harm to justify their victim status⁷. Consequently, the Committee declares the communication inadmissible under article 5 (1) of the Optional Protocol.

7. The Committee therefore decides:

⁵ In this regard, see the Human Rights Committee's decisions in *Beydon et al. v. France* (CCPR/C/85/D/1400/2005), para. 4.3; *Aalbersberg et al. v. The Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3; *Brun v. France* (CCPR/C/88/D/1453/2006), para. 6.3, and *Fatima Andersen v Denmark* (CCPR/C/99/D/1868/2009), para. 6.4.

⁶ Application no. 32467/22, *Marcel Mittendorfer vs. Austria*, párr.30.

⁷ See *a contrario sensu* CRC/C/88/D/108/2019, párr. 9.14.

(a) That the communication is inadmissible under article 5(1) of the Optional Protocol.

(b) That the present decision shall be transmitted to the authors of the communication and, for information, to the State party.

ANNEX I**Individual Opinion by Committee Member Benoit Van Keirsbilck
(dissenting)**

1. The case was submitted by eleven children over the age of twelve who complain about restrictions to their access to education, culture, sport and other activities during the COVID pandemic, due to regulations adopted by Italy to limit the spread of the virus.
2. Although the Optional Protocol does not provide for the possibility of class actions (*actio popularis*), it nevertheless recognises that communications may be submitted by an individual or a group of individuals. This has been recognised in other cases, such as *M.L. and others v. Georgia* (communication No. 144/2021). This is the case here, as each of the complainants is clearly identified.
3. It is indisputable that the authors failed to specify individually and in sufficient detail how their rights were specifically affected. However, it is well known that the anti-Covid law provided for clear and precise restrictions on access to services, leisure and other activities, thereby infringing rights recognised by the Convention.
4. All the authors are subject to compulsory schooling and have the right to education, leisure and respect for their private life; the undisputed fact that they were unable to attend school but could only follow distance learning therefore infringed this right. I personally but respectfully believe that the majority was wrong to consider that they 'have failed to provide any information as to how these emergency and temporary measures impacted the enjoyment of their Convention rights individually and therefore failed to demonstrate any personal, real and significant harm to justify their victim status' (para 6.4).
5. The level of requirement thus set seems to me to be disproportionately high, at least as far as schooling is concerned (for other activities, it would have been necessary for each child to explain precisely what activities they had been doing before and could no longer do afterwards).
6. We know that the individual communications procedure can be used in the context of strategic litigation to advance children's rights in a comprehensive manner. This approach is even encouraged by the Committee, which has had to examine such cases or which, in its views, asks States not only to remedy the individual violations found, but also to address the systemic causes of these violations (by changing laws or practices).
7. If this obstacle to admissibility had been removed, it is certain that this case raised another question of admissibility that the Committee was unable to examine: has the condition of exhaustion of domestic remedies been met? This question is contested by the State party, but the authors develop interesting arguments regarding the existence and effectiveness of available remedies.
8. Finally, it would have been interesting to rule on the merits of the case, to determine whether the interference with the enjoyment of rights was justified and proportionate, whether the age of twelve was based on sufficient grounds, and whether there was discrimination based on age or on whether or not the person had been vaccinated.
9. At a time when vaccination is often called into question, it would have been interesting for the Committee to rule on the legitimacy of the public policies that impose it.