



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 30/2017\* \*\*

<i>Communication submitted by:</i>	N.R. (represented by counsel, Alberto Manuel Poletti Adorno)
<i>Alleged victim:</i>	C.R.
<i>State party:</i>	Paraguay
<i>Date of communication:</i>	10 May 2017
<i>Date of adoption of Views:</i>	3 February 2020
<i>Subject matter:</i>	Right to maintain personal relations and direct contact with the father
<i>Procedural issues:</i>	Inadmissibility <i>ratione temporis</i> ; failure to exhaust domestic remedies; lack of substantiation
<i>Articles of the Convention:</i>	3, 4, 5, 9 (3), 10 (2), 18 and 19
<i>Article of the Optional Protocol:</i>	7 (e), (f) and (g)

1. The author of the communication is N.R., a national of Argentina born on 20 January 1976. The author submits the communication on behalf of his daughter, C.R., who was born on 16 June 2009 and is also an Argentine national. He claims that his daughter is a victim of violations of articles 3, 4, 5, 9 (3), 10 (2), 18 and 19 of the Convention. The Optional Protocol entered into force for the State party on 20 April 2017.

#### The facts as submitted by the author

2.1 For an unspecified length of time, the author was in a relationship with L.R.R., a national of Paraguay with whom he had a daughter, C.R., who was born in La Plata, Argentina. In June 2009, 11 days after the birth of her daughter, L.R.R. left with her for her home town, Asunción, where they took up residence. The author occasionally travelled to

\* Adopted by the Committee at its eighty-third session (20 January–7 February 2020).

\*\* The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffé, Olga A. Khazova, Cephass Lumina, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Otani Mikiko, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Aïssatou Alassane Moulaye Sidikou, Ann Marie Skelton, Velina Todorova and Renate Winter.



Paraguay while his daughter was still small to visit her. The author states that no custody decision was ever made but that it is the girl's mother who has de facto custody of her.

2.2 On an unspecified date, L.R.R. decided to begin a new life and began raising obstacles to contact between the author and his daughter. The author explains that, because of his former partner's intransigence, he was unable to communicate regularly with his daughter.

2.3 On 16 February 2015, the author initiated proceedings for access to his daughter with court office No. 7 of the Juvenile Court (fourth roster) of Asunción. He requested that his daughter be able to communicate with him by telephone and that she be able to make trips to Argentina, for which he would bear the cost.<sup>1</sup>

2.4 On 12 March 2015, L.R.R. responded to the author's application by making it clear that because of his rejection of a proposal for alimony, she would not allow him to approach or communicate with his daughter. The author explains that previously, on a date that he does not specify, he had been sued for alimony and that he seems to have been denied access to his daughter because, in her mother's opinion, the alimony payments were too small.

2.5 On 14 April 2015, the hearing was held and the parties agreed that: (a) the author would communicate with his daughter by Skype – the father would provide the necessary equipment – on Mondays, Wednesdays and Fridays from 6 to 7 p.m.; (b) that the author's daughter would spend seven days with him in Argentina during the winter holidays and another seven days during the week of the author's birthday (19 January), during the summer holidays; and (c) that the author would spend one Saturday a month, from 9 a.m. to 6 p.m., with his daughter.

2.6 On 30 April 2015, the Court handed down final judgment No. 139, which established these arrangements for visitation and other forms of contact.<sup>2</sup> In his application, the author requested that the arrangements be subject to the penalties for non-compliance set out in article 96 of the Code on Children and Adolescents<sup>3</sup> and in Act No. 4711.<sup>4</sup> His request was denied, however, so on 11 June 2015, he filed an appeal for clarification, which was rejected on 13 August 2015. On 11 August 2016, the Appeal Court rejected his appeal against that decision.<sup>5</sup>

2.7 On 5 October 2015, the author initiated proceedings for enforcement of the judgment. On 14 December 2015, and on 6 and 12 January 2016, the author lodged complaints with the Juvenile Court for failure to comply with the judgment, requesting application of article 96 of the Code on Children and Adolescents, article 236 of the Code of Judicial Organization<sup>6</sup> and Act No. 4711. He also filed complaints, dated 29 April 2015 and 24 February 2016, concerning delays in the administration of justice.<sup>7</sup> In addition, on 22 and 29 April 2015 and on 6 January 2016, he applied to the State party's courts for interim measures but did not receive a response.<sup>8</sup> The author states that his application for interim measures has not been examined by any Paraguayan courts.

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<sup>1</sup> The author provides a copy of the claim that he filed with the Juvenile Court of Asunción on 16 February 2015.

<sup>2</sup> The author provides a copy of final judgment No. 139 of the Juvenile Court, dated 30 April 2015.

<sup>3</sup> Code on Children and Adolescents (Act No. 1680/01). "Article 96. On the failure to respect access arrangements. The repeated failure to respect court-ordered access arrangements may entail changes in or the temporary suspension of custody arrangements."

<sup>4</sup> Act No. 4711 on penalties for non-compliance with a court order, promulgated on 13 December 2012.

<sup>5</sup> The author attaches a copy of judgment No. 77 of the Juvenile Appeal Court, dated 11 August 2016.

<sup>6</sup> Code of Judicial Organization, promulgated on 10 December 2001. "Art. 236. Litigants, their lawyers or representatives or other persons may be warned, fined or ordered detained by tribunals and courts for any offences they commit against judicial authority or decorum in hearings, in briefs, in the execution of their mandates or orders or in any other circumstance related to the performance of their duties."

<sup>7</sup> The author provides copies of the complaints concerning delays in the administration of justice that he lodged with the Juvenile Court on 29 April 2015 and 14 December 2015.

<sup>8</sup> The author provides copies of the applications for interim measures that he submitted to the Juvenile Court on 22 April 2015.

2.8 On 30 March 2016, the Appeal Court, in interlocutory order No. 64, upheld the complaint concerning delays in the administration of justice and enjoined the Juvenile Court to issue a ruling requesting enforcement of the judgment within 72 hours of being notified of the order. On 7 April 2016, in interlocutory order No. 66, the Juvenile Court ruled that enforcement of the access arrangements should be begun again and that the respondent should be notified of that ruling within three days. In May 2016, through interlocutory order No. 128, the Court decided to uphold compliance with the judgment and ordered that a social worker be sent to the respondent's home with a view to giving practical effect to the access arrangements in respect of the author and his daughter. On 28 June 2016, the Court, in final judgment No. 188, upheld the author's application for enforcement of the terms of final judgment No. 139 of 30 April 2015. The author points out that, in view of the series of complaints he filed, the measures ordered in interlocutory order No. 66 and final judgment No. 188 do not provide for the measures needed to ensure compliance. They also make no reference to the numerous documents in the case files alleging the respondent's failure to comply with the access arrangements and requesting interim measures.

2.9 On 8 July, 2 and 24 August, 3 November, 7 and 26 December 2016, and 15 February and 6 March 2017, the author again lodged complaints claiming that the judgment was not being enforced.<sup>9</sup> On 23 March 2017, he also filed a complaint before the Supreme Court of Justice regarding delays in the administration of justice.

2.10 The author notes that, on 25 April 2017, the Appeal Court, in interlocutory order No. 60, held that

the right to the enforcement of judgments and other judicial decisions is a component of the fundamental right to effective protection of rights (Code of Civil Procedure, arts. 163 and 519) and no authority shall fail to enforce judgments with the force of *res judicata*, much less delay their enforcement, especially when the best interests of a girl who has the right to a relationship with the parent with whom she does not live are at stake ... Judges are obliged to ensure that judgments and other judicial decisions are enforced in a timely manner. Furthermore, although the mother's comments to the social worker, stating that she does not have the resources for an Internet connection and that it is the girl who, because she has not spent much time with her father, does not wish to travel with him during the holidays, are understandable, it has to be kept in mind that, as time passes, the failure to respect the access arrangements and the increasingly infrequent contact between father and daughter are causing the daughter's unwillingness to travel with her father. However, this does not mean that the mother should take a passive – or even convenient – stance in the face of these facts, as it is she who has to step up her efforts to comply with the access arrangements or seek an alternative mechanism if the court-ordered access arrangements are difficult to comply with. ... Furthermore, although there is no procedure for enforcing penalties for non-compliance with this kind of judgment, judges have legal means of enforcing the judgment – namely, they could adhere to a series of principles, whether substantive or procedural, through which compliance with or enforcement of the judgment could be achieved.<sup>10</sup>

2.11 The author points out that, despite all his complaints, the State party did not take any steps to ensure compliance with the judgment or accede to his requests to take part by videoconference in the judicial proceedings conducted in the State party.

2.12 The author explains that the State party's authorities also failed to take into account the numerous requests he submitted to the San José school to be allowed access to his daughter and his complaints about its failure to comply with the order allowing him to keep in touch with her by telephone. He also notes that, despite the social worker's report, the authorities failed to take any decision to enforce the judgment.

<sup>9</sup> The author provides copies of the complaints filed with the Juvenile Court on 8 July, 2 and 24 August, 3 November, and 7 and 26 December 2016.

<sup>10</sup> The author attaches a copy of the Appeal Court's interlocutory order No. 60 of 25 April 2017.

### The complaint

3.1 The author maintains that, by not taking any steps to ensure compliance with the judgment establishing access arrangements, the State party's authorities failed to take into account the best interests of the child, as they are required to do under article 3 of the Convention. He points out that the girl's relationship with her father and his family is essential to her development. To bolster his argument, he refers to Argentine case law regarding visitation arrangements, according to which, in line with the Convention, the best interests of the child must be a primary consideration. Thus, in a case involving the question of visitation arrangements for a child whose parents are separated and live in different States, the defence of the child's right to maintain personal relations and direct contact with both parents on a regular basis must prevail as the primary consideration in all judicial matters.<sup>11</sup>

3.2 The author notes that the Code on Children and Adolescents (Act No. 1680/2001) does not provide for an explicit procedure for the enforcement of judgments relating to access arrangements. The author refers to *Strumia v. Italy*, a European Court of Human Rights case in which the Court sanctioned the State party for failing to take the necessary measures to ensure that a father could maintain a relationship with his daughter, despite the existence of a court order providing for such measures, and thus failing to act in the best interests of the child.<sup>12</sup> The author also refers to *Giorgioni v. Italy*, a case in which the same Court held that the right to respect for family life had been violated.<sup>13</sup> Finally, he refers to *S.B.S. et al.* of 28 April 2014, in which the Juvenile Appeal Court of Asunción held that the right/duty of the parent who does not have legal custody to maintain suitable communication with the child and to oversee his or her education in the event of separation or divorce must, in accordance with article 9 (3) of the Convention, be appropriately valued so that it does not become a source of conflict culminating in serious harm to the child's personal development.

3.3 The author also submits that the State party has violated article 4 of the Convention since, despite the court judgment and legal provisions supporting his claim to contact with his daughter, the State party's judicial authorities have not taken the necessary measures to give effect to his daughter's rights under the Convention.

3.4 In addition, the author submits that the State party has violated article 5 of the Convention, as he was sued for alimony and seems to have been denied a relationship with his daughter simply because her mother was of the view that his alimony payments were insufficient. The author maintains, however, that the amount is equivalent to a significant percentage of his salary. He points out that the alimony suit in the lower court lasted two years and that, in the end, the amount he had to pay was doubled, with retroactive effect. He submits that he should not be forced to give up contact with his daughter in order to provide greater economic support and that he is unable to provide additional economic support because of the severe crisis affecting the Argentine State, which is his employer.

3.5 The author also submits that the State party has violated article 9 (3) of the Convention, according to which States must respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis. The author refers to an Argentine court ruling that states that parents, on separating, must ensure that their children are able to communicate with the parent with whom they do not live and that, moreover, States must respect the right referred to in the Convention as the right of the child to maintain personal relations and direct contact with both parents on a regular basis. The author notes that he makes his alimony payments as scheduled, so there is nothing preventing the mother from taking out a contract with a provider of Internet services, which are now easily obtained, even for mobile telephones.

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<sup>11</sup> The author refers to a judgment of the National Civil Court, Chamber I, of 26 December 1997, LL-1998, D-144, mentioned in Belluscio, Claudio, *El derecho a visitar a los hijos. Tratado teórico y práctico* (Ed. Tribunales, 2012).

<sup>12</sup> Application No. 53377/13, 23 June 2016.

<sup>13</sup> Application No. 43299/12, 15 September 2016.

3.6 The author maintains that the State party has violated article 10 (2) of the Convention, which states that “a child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents”. He points out that, in this case, there are no exceptional circumstances that would prevent him from maintaining a relationship with his daughter. Despite having requested the support of the State party’s authorities on numerous occasions, he did not receive favourable or expeditious replies.

3.7 The author also submits that the State party has violated articles 18 and 19 of the Convention. He notes that these articles refer to the effects on his daughter of the failure to comply with the court-ordered access arrangements. He also notes that both parents are responsible for the upbringing and education of their children and that the State party has clearly taken no action to guarantee these rights.

3.8 The author claims that he has exhausted all domestic remedies provided for in the State party’s legislation, as he has taken his case to the Juvenile Appeal Court, the decisions of which may not be appealed before the Supreme Court of Justice. He reiterates that all the judges of both the lower and the appeal courts have refused to adopt interim measures and order that he be allowed to contact his daughter through the San José school so that he can at least have a better relationship with her.

3.9 The author concludes that a final judgment exists and has been upheld by the Appeal Court. He states that he has requested the judicial authorities to take several measures, in respect of which there has been no action: (a) change the access arrangements in accordance with article 96 of the Code on Children and Adolescents; (b) impose the fines provided for in article 236 of the Code of Judicial Organization; and (c) allow for the establishment of contact through the San José school. The author notes that on numerous occasions, he has expressed a preference for resorting to the first two proceedings and leaving criminal prosecution for non-compliance with a court order (Act No. 4711) for an extreme situation in which the respondent continues not to allow him to contact his daughter.

3.10 The author asks the Committee to find the present communication admissible and to request the State party to offer him immediate assistance to comply with the access arrangements, provide guarantees of non-repetition and conduct an investigation of the case, which should include the institution of proceedings and the punishment of those responsible, as well as to compensate him for the harm done. The author states that he is willing to reach a friendly settlement if the State party agrees to actively defend his and his daughter’s rights.

#### **State party’s observations on admissibility and the merits**

4.1 In its observations of 4 September 2018, the State party submits that the communication should be declared inadmissible *ratione temporis*, in accordance with article 7 (g) of the Optional Protocol, as the alleged facts concern a period before the Optional Protocol entered into force for the State party. The State party notes that the initial conciliatory agreement signed by the author and his daughter’s mother was approved by the courts under final judgment No. 139 of 30 April 2015. It points out that the facts alleged in respect of C.R.’s situation cannot be said to have continued to occur on a permanent basis after 20 April 2017, the date on which the Optional Protocol entered into force for the State party.

4.2 The State party also submits that, in accordance with article 7 (e) of the Optional Protocol, the communication is inadmissible because not all domestic remedies have been exhausted. It points out that the author has not submitted his complaint to the Supreme Court of Justice for it to decide on the merits of the dispute, in accordance with the Code on Children and Adolescents. The author, in submitting a remedy of complaint concerning delays in the administration of justice under articles 412 and 414 of the Code of Civil

Procedure, applied to the Criminal Division of the Supreme Court of Justice for merely procedural purposes.<sup>14</sup>

4.3 The State party points out that the National Secretariat for Children and Adolescents looked into C.R.'s situation and submitted a report in which it stated that no evidence was found of any violations of her rights and that she attended a private school, lived with her mother in a decent home and kept in touch with her father via the Internet. C.R.'s mother has made a statement in which she gave an account of the relationship between C.R. and the author, noting that she constantly insisted that they should remain in contact, that she and C.R. had travelled to Argentina between 2017 and 2018 so that the girl could visit her father, and that she herself had paid for one of the trips.

4.4 The State party notes that, in keeping with the principle of the best interests of the child, it will continue making efforts to safeguard C.R.'s rights under the Convention and relevant national law.

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 In his comments of 18 January 2019, the author asks the Committee to reject the State party's request for it to find the communication inadmissible. The author, in reply to the State party's argument that the communication should be found inadmissible *ratione temporis*, submits that the State party is overlooking all the telephone records proving the ongoing difficulties he has encountered in reaching his daughter.<sup>15</sup> This situation began in 2015, worsened in 2017 and continues to this day, even though the Appeal Court has ruled that the mother of his daughter must make greater efforts to allow and facilitate communication between father and daughter. He maintains that his daughter has travelled to Argentina, her country of origin, only once. In addition, he points out that C.R.'s mother's statement that she has respected the access arrangements is utterly false. He notes that the statement was not accompanied by any evidence, that he has not received a visit from his daughter in Argentina, in breach of his agreement with her mother, and that occasional telephone calls account for his only contact with his daughter.

5.2 The author observes that the State party has not commented on its failure to cooperate in requiring his daughter's mother to comply with the judgment. He notes that, although under the Code on Children and Adolescents, lower courts have 6 days to issue rulings<sup>16</sup> and appeal courts have 10 days, those deadlines have not been respected.<sup>17</sup> The author has had to lodge remedies of complaint concerning delays in the administration of justice against the judges of the lower and appeal courts. He points out that the situation has not improved since 20 April 2017, the date of entry into force of the Optional Protocol for the State party.

5.3 The author notes that not only did he give his daughter a tablet to enable her to communicate with him but that, at her mother's request, he also provided a modem to make it possible to connect to the Internet. Communication between father and daughter did not improve, however. The author stresses that he has reported this situation to the judicial authorities, who are responsible for enforcing the judgment, but that he has not obtained any of the responses provided for in the State party's system, such as the imposition of a fine, referral of the case to the Public Prosecution Service for the institution of proceedings for non-compliance with a court order, or a change to the access arrangements.

<sup>14</sup> Code of Civil Procedure of Paraguay (Act No. 1337/88). "Art. 412. Prior request and duty of urgency. When the legal period for issuing a ruling has elapsed, the judge or the court that has not issued the ruling may be requested to issue it by any of the parties to the proceedings. ... Art. 414. Request for report. Once a complaint has been filed, the authority to which the judge or court responsible for the delay answers will request a report from that judge or court. The report, which must state why a ruling cannot be issued, must be produced by the following day."

<sup>15</sup> The author attaches a list of telephone calls made to his daughter's mother.

<sup>16</sup> "Art. 179. On judgments. The judge shall convene a hearing within six days of the termination of proceedings, at which time his or her judgment shall be read out."

<sup>17</sup> "Art. 181. On appeal court proceedings. Once the case file has been received, the Juvenile Appeal Court shall notify the other party of the appeal within three days. ... Once the hearing is over, the Court shall terminate proceedings and render judgment within ten days."

5.4 The author, referring to the requirement for domestic remedies to have been exhausted, argues that the State party has failed to mention the last part of article 7 (e) of the Optional Protocol, which states: “This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief.” The author’s applications to the judicial authorities have always led to what he describes as “proceedings that are ineffective, unproductive and incapable of ensuring compliance with a judgment handed down by Paraguayan judges and involving a girl and her father who are both of Argentine nationality”. The author maintains that the repeated failure to meet deadlines demonstrates that the Paraguayan justice system is not prepared to deal adequately with his applications since, even though an order was issued by majority vote of the Appeal Court to forward the case file to the Public Prosecution Service for the institution of proceedings for non-compliance with a court order, that order had not to date been complied with.

5.5 The author notes that, notwithstanding the State party’s assertion to the contrary, it was not possible for him to gain access to the Supreme Court of Justice by pursuing ordinary appeal options, in particular as the appeal he had lodged had been upheld.<sup>18</sup> He points out that neither article 28 of the Code of Judicial Organization<sup>19</sup> nor Act No. 609/1995, on the organization of the Supreme Court of Justice, states that cases from the juvenile justice system must be brought before the Supreme Court.<sup>20</sup> The author reiterates that it is the respondent (his daughter’s mother) who could have challenged the Appeal Court’s ruling and that, since she did not do so, it took on the force necessary for it to be enforced, in view of the mother’s repeated breaches of the access arrangements and the failure of the Paraguayan State to act on his numerous complaints. Not even under the supplementary rules of the Code of Civil Procedure does the law provide for an appeal to be lodged before the country’s highest court in respect of an interlocutory matter. The decision of the Appeal Court is not an original judgment of that body, but was simply handed down within the framework of an appeal against an interlocutory order issued by a lower court, meaning that article 403 of the Code of Civil Procedure is applicable.<sup>21</sup>

5.6 In addition, the author notes that the requests for the facilitation of contact with his daughter that were submitted to the Paraguayan National Secretariat for Children and Adolescents and San José, the private school where his daughter is studying, have never been granted.

5.7 The author maintains that although, on 30 May 2018, the State party promulgated Act No. 6038/2018, under which the Code on Children and Adolescents was amended, the judgment is still not being complied with and he is still encountering difficulties in contacting his daughter. The author refers to views of the Human Rights Committee in which the Committee noted that “the author obtained court authorization for his girls to spend a few days with him but that the authorization could not be acted on because the mother refused to comply. The authorities did nothing to ensure that the author’s ex-wife complied with the court order.”<sup>22</sup> The Committee found that the State party had not taken the necessary steps to guarantee the family’s right to protection under article 23 of the

<sup>18</sup> The author does not specify which appeal he is referring to or the date on which it was lodged.

<sup>19</sup> “Art. 28. The Supreme Court of Justice shall: ... 2. Hear applications for review and reversal of (a) the final judgments handed down by the Court of Audit and those of the appeal courts that amend or revoke lower court judgments, in accordance with the codes of procedure and the respective laws; (b) the original judgments of the appeal courts in civil, commercial, criminal and audit matters; and (c) the judgments of appeal courts imposing the death penalty or prison sentences of 15 to 30 years, which are not final until the Supreme Court of Justice has ruled on them. The submission of applications for review and reversal of these sentences shall be automatic, even if the parties consent to them.”

<sup>20</sup> Promulgated on 23 June 2005.

<sup>21</sup> “Art. 403. Allowability of appeals before the Court. An appeal may be brought before the Supreme Court of Justice against the final judgment of an appeal court that overturns or amends a lower court judgment. In the latter case, the appeal will concern only the part of the judgment that has been subject to amendment and within the limits of what was amended. Judgments delivered as a result of forfeiture proceedings, possessory actions and, in general, proceedings that allow for a subsequent trial are not subject to this remedy of appeal. Appeals may also be brought against original judgments of an appeal court that cause irreparable harm or involve interlocutory decisions.”

<sup>22</sup> *Asensi Martínez v. Paraguay* (CCPR/C/95/D/1407/2005), para. 7.4.

International Covenant on Civil and Political Rights. The author also refers to the jurisprudence of the Human Rights Committee to argue that the right to a fair trial includes the right to expeditious administration of justice and that the very nature of proceedings concerning custody or a divorced parent's right of access to his or her children requires that the issues complained of be adjudicated in a timely manner.<sup>23</sup>

5.8 The author requests that the State party provide free psychological assistance to his daughter and her mother to facilitate his relationship with their daughter and prevent new family conflicts. He also requests the State party to take the measures provided for in new article 96 of the Code on Children and Adolescents, Act No. 4711 on non-compliance with a court order, and article 236 of the Code of Judicial Organization, under which litigants are fined for non-compliance with judicial provisions, until the mother allows her daughter to travel to Argentina to see her father.

#### **Additional information submitted by the author**

6.1 In his comments of 5 March 2019, the author again requests an interim measure, whereby the Committee would ask the State party to impose a fine on his daughter's mother for each day that she does not ensure that he and his daughter can communicate. In addition, the author reports that on 31 December 2018, in proceedings brought before the Juvenile Court of Luque, the city in which the girl currently lives, he reached an agreement with the mother of his daughter to modify the access arrangements. The agreement was not respected, however.

6.2 In January 2019, the mother arbitrarily decided to block the author's calls, and his daughter did not travel to Argentina to visit him, as had been planned. On 1 February 2019, the agreement modifying the access arrangements was submitted to the Court.

6.3 On 20 February 2019, the author petitioned the Juvenile Court of Asunción for application of the measures provided for in article 96 of the Code on Children and Adolescents. The author notes that the Court failed to comply with the three-day deadline and, as of 5 March 2019, had not convened the hearing. He states that, on the contrary, the Court had given him a warning for failing to respect the visitation agreement, a situation that had not been at issue in the proceedings.<sup>24</sup> In this connection, the author explains that, because of the economic crisis in Argentina and because he has no vacation time, he was unable to travel to see his daughter, as he would have liked, but that his inability to travel does not in any way lessen his wish to be in his daughter's life or keep in touch with her by telephone. He notes that, as shown in a list of WhatsApp calls not answered by the mother, he is not in contact with his daughter. He reasserts that despite having provided a modem for an Internet connection, he is still unable to communicate with his daughter. He also reasserts that although he has reported this situation to the judicial authorities, he has still not obtained any of the responses that the system provides for.

6.4 In his comments of 29 August 2019, the author notes that the State party's authorities are still refusing to properly enforce the judgment handed down by the courts.

6.5 On 11 March 2019, the Juvenile Court convened a hearing for 18 March 2019, once again taking longer to do so than required under Act No. 6038/2018. During the hearing, his daughter's mother denied the allegations against her, and there was no ruling on the documentary evidence that had been added to the case file.<sup>25</sup>

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<sup>23</sup> The author refers to *Muñoz Hermoza v. Peru* (CCPR/C/34/D/203/1986), para. 11.3; *González del Río v. Peru* (CCPR/C/46/D/263/1987), para. 5.2; *Fei v. Colombia* (CCPR/C/53/D/514/1992), para. 8.4; and *Balaguer Santacana v. Spain* (CCPR/C/51/D/417/1990), para. 6.2.

<sup>24</sup> The author does not provide any further information about when or under what circumstances he was given a warning about non-compliance with the visitation arrangements.

<sup>25</sup> The author provides no more information on that point.



6.6 On 30 April 2019, the Juvenile Appeal Court, in interlocutory order No.107, rejected the author's application for interim measures, thereby upholding the decision of the Juvenile Court of Luque of 18 February 2019.<sup>26</sup>

6.7 Through interlocutory order No. 278 of 8 July 2019, the mother of the author's daughter was once again ordered to comply with final judgment No. 139 of 30 April 2015, and, as an interim measure, an instruction was given for the San José school to be used as the venue for communication between father and daughter. The author notes that the Court expressly recognized that he had requested that his daughter's mother be fined for each day of non-compliance; however, it did not rule on this request. In the author's view, this demonstrates that the order violated the principle of consistency, the right to petition the authorities and the right to contact between the author and his daughter, which he was unable to exercise between December 2018 and June 2019.

6.8 The author maintains that, given the risk that, in view of the conduct of his daughter's mother to date, she will continue to keep the girl from having a relationship with him, article 96 of Act No. 6083/2018 must be complied with.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

7.1 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 to the Convention on the Rights of the Child on a communications procedure, whether the communication is admissible.

7.2 The Committee notes the State party's argument that the author's communication should be found inadmissible *ratione temporis* because the conduct alleged therein – non-compliance with the agreement on arrangements for visitation and other forms of contact that was approved by the courts in final judgment No. 139 of 30 April 2015 – did not continue to occur “on a permanent basis” after 20 April 2017, the date on which the Optional Protocol entered into force for the State party. The Committee recalls that, under article 7 (g) of the Optional Protocol, it is not permitted *ratione temporis* to consider a communication when the facts that are the subject of that communication occurred prior to the entry into force of the Optional Protocol for the State party concerned, unless those facts continued after that date. The Committee notes the author's argument that the violations of the Convention continued after the entry into force of the Optional Protocol for the State party, since he continued to encounter obstacles to communicating and maintaining a relationship with his daughter after 20 April 2017, despite his submission of several complaints to the State party's courts claiming that the judgment establishing arrangements for visitation and other forms of contact between the author and his daughter had not been enforced. The Committee therefore considers that, in the particular circumstances of the case, the violations alleged by the author continued after the entry into force of the Optional Protocol. Accordingly, the Committee concludes that it is not precluded by article 7 (g) of the Optional Protocol from considering the communication *ratione temporis*.

7.3 The Committee also notes the State party's argument that, when the author submitted his communication, he had not exhausted all available domestic remedies because he had not submitted his complaint to the Supreme Court of Justice for it to rule on the merits of the dispute, in accordance with the Code on Children and Adolescents. However, the Committee notes the author's argument that it was not possible for him to gain access to the Supreme Court of Justice, as the State party's legislation does not provide for the possibility of appealing “an interlocutory matter” before the Supreme Court. In particular, the Committee takes note of the author's claim that, in accordance with article 403 of the Code of Civil Procedure, the decision of the Juvenile Appeal Court, which was made within the framework of an appeal against an interlocutory order issued by a lower

<sup>26</sup> The author provides a copy of interlocutory order No. 107 of 30 April 2019 issued by the Juvenile Appeal Court.

court, could not be appealed before the Supreme Court of Justice (para. 5.5). The Committee observes that, on numerous occasions, before and after the Optional Protocol entered into force for the State party, the author submitted complaints alleging non-compliance with final judgment No. 139 of 30 April 2015 regulating the author's contact with his daughter, requests for interim measures and complaints concerning delays in the administration of justice, including to the Supreme Court of Justice. The Committee also observes that the State party has not explained how a possible additional appeal before the Supreme Court of Justice could have been effective or appropriate in the author's circumstances. In view of the nature of the matter under consideration, the Committee finds that the author has exhausted all the domestic remedies available to bring his complaint before the State party's judicial authorities. Accordingly, the Committee concludes that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

7.4 The Committee considers that the author's claims under articles 18 and 19 of the Convention have not been sufficiently substantiated for the purposes of admissibility and finds them inadmissible under article 7 (f) of the Optional Protocol.

7.5 The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his claims based on articles 3, 4, 5, 9 (3) and 10 (2) of the Convention, regarding the State party's failure to take into account the best interests of the child and to implement the judicial decision establishing visitation rights and guaranteeing the right of the author's daughter to maintain personal relations and direct contact with her father. The Committee therefore finds the complaint admissible and proceeds to consider it on the merits.

#### *Consideration of the merits*

8.1 The Committee has considered this communication in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

8.2 One of the issues before the Committee is whether, in the circumstances of the present case, the State party has taken effective measures to guarantee the right of the author's daughter to maintain a personal relationship and direct contact with her father on a regular basis. The author has also alleged that the State party's authorities did not take into account the best interests of the child, since his daughter's relationship with him and his family is essential for her development and should have been a primary consideration in the actions taken by the national authorities.

8.3 In that respect, the Committee notes, in particular, the arguments put forward by the author in his complaint, according to which: (a) the State party failed to take the necessary measures to ensure compliance with final judgment No. 139 of 30 April 2015 establishing the arrangements for visitation and other forms of contact, and this decision has continued to have effects after 20 April 2017, the date on which the Optional Protocol entered into force for the State party; (b) the author had to lodge complaints concerning the delays in judicial proceedings; and (c) despite the social worker's report, the State party's authorities failed to take any of the measures provided for in national legislation to ensure compliance with final judgment No. 139 of 30 April 2015 (para. 3.9).

8.4 Under article 9 (3) of the Convention, States Parties have an obligation to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. "The preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties ... are particularly relevant in cases where parents are separated and live in different places."<sup>27</sup> The Committee must therefore determine whether the State party's authorities have taken effective measures to ensure the preservation of personal relations and contact between the author and his daughter.

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<sup>27</sup> General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 70.

8.5 The Committee recalls that, as a general rule, it is for the national authorities to interpret and enforce domestic law, unless their assessment has been clearly arbitrary or amounts to a denial of justice.<sup>28</sup> The Committee's role is to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that the best interests of the child were a primary consideration in that assessment.

8.6 In that regard, the Committee notes that, by means of judgment No. 139 of 30 April 2015, visitation arrangements were established in respect of the author and his daughter. However, despite the author's repeated requests over the years for the judgment to be enforced, and despite the judicial decision of 25 April 2017 ordering the mother to facilitate conversations between C.R. and the author by Skype, that judgment was never enforced. The Committee also notes the author's claim, not refuted by the State party, that, despite the decision of May 2016 ordering the involvement of a social worker, and the decision of 8 July 2019 by means of which an interim measure was granted to facilitate contact through the San José school, C.R. was unable to enjoy her right to personal relations and direct contact with her father on a regular basis for more than four years.

8.7 The Committee considers that court procedures establishing visitation rights between a child and a parent from whom he or she is separated must be expeditiously processed, since the passage of time may have irreparable consequences for the relationship between them. This includes the rapid enforcement of decisions resulting from those procedures. In the present case, the Committee notes the author's claim, not refuted by the State party, that, despite his many attempts to secure compliance with the visitation arrangements established by the Court's judgment of 30 April 2015, that judgment has not been enforced and he has not been able to maintain regular and effective contact with his daughter over the years. In that regard, the Committee notes the mother's comments to the social worker, included in interlocutory order No. 60 of 25 April 2017, according to which she did not have the resources for an Internet connection and that it was the girl who, because she had not spent much time with her father, did not wish to travel with him during the holidays. At the time when the Court issued its order, it determined that it was in the best interests of the girl to have contact with her father. If that court order had been effectively enforced, the problem of the girl's gradual alienation from her father could have been avoided. In view of this, the Committee considers that the authorities did not take sufficient steps in a timely manner to ensure that the mother of the author's daughter complied with the Court's judgment.<sup>29</sup>

8.8 In light of the foregoing, the Committee considers that the State party's failure to take effective steps to guarantee the right of the author's daughter to maintain personal relations and direct contact with her father on a regular basis deprived the girl of the enjoyment of her rights under the Convention. Given the particular circumstances of the present case, in particular the length of time that has passed since the judicial decision establishing visitation rights was taken in 2015, and bearing in mind the young age of the author's daughter at that time, the Committee is of the view that the authorities did not carry out the Court's orders in a timely and effective manner and did not take the necessary steps to enforce those orders so as to ensure contact between the author and his daughter. The Committee concludes that this amounts to a violation of articles 3, 9 (3) and 10 (2) of the Convention.

8.9 Having found a violation of articles 3, 9 (3) and 10 (2) of the Convention, the Committee does not consider it necessary to examine whether the same facts constitute a separate violation of articles 4 and 5 of the Convention.

8.10 The Committee on the Rights of the Child, acting under article 10 (5) of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, is of the view that the facts before it reveal violations of articles 3, 9 (3) and 10 (2) of the Convention.

9. Consequently, the State party should provide the author's daughter with effective relief for the violations suffered, in particular through the adoption of effective measures to

<sup>28</sup> *L.H.L. and A.H.L. v. Spain* (CRC/C/81/D/13/2017), para. 9.5.

<sup>29</sup> *Asensi Martínez v. Paraguay* (CCPR/C/95/D/1407/2005), para. 7.4.

ensure the enforcement of final judgment No. 139 of 30 April 2015, which established visitation arrangements in respect of the author and his daughter, including through counselling and other appropriate and proactive support services intended to rebuild the relationship between the girl and her father, taking due account of an assessment of her best interests at the current time. The State party is also under an obligation to prevent similar violations in the future. In this regard, the Committee recommends that the State party:

(a) Take the necessary measures to ensure the immediate and effective execution of judicial decisions in a child-friendly way, so that contact between the child and his or her parents is re-established and maintained;

(b) Train judges, members of the National Secretariat for Children and Adolescents and other relevant professionals on the right of children to maintain personal relations and direct contact with both parents on a regular basis and, in particular, on the Committee's general comment No. 14.

10. In accordance with article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the Committee's Views. The State party is also requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. Lastly, the State party is requested to publish the Committee's Views and to have them widely distributed.

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