

Decisions and Views of the Committee on the Rights of the Child

Parent-child separation and Children's Rights

The case of:
B.J. and P.J. vs. Czech Republic



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The original version of this work has been prepared by Lexin Zhao, Paul Lee, Ruhama Abebe, and Xuemeng Yu as part of their studies in the Master of Laws: Advanced Studies in International Children's Rights of Leiden University, Academic Year 2023/2024. The published version concerns an edited version published by the Leiden Children's Rights Observatory.

BJ and PJ. v. Czech Republic (Communication No. 139/2021): Child-friendly version





SUMMARY

(Link to the full case decision [here](#))

BJ and PJ are sister and brother, born in 2006 and 2003 (the children). They live in the Czech Republic (Czechia). BJ and PJ's parents divorced in 2018. Ever since then, BJ and PJ have been living with their mother. However, as BJ and PJ were not going to school and were not receiving mental health treatment, the Czech court decided that they should be taken away from their mother and put in a children's residential care home.

The Czech court made this decision without considering the children's views. BJ and PJ presented this complaint to the United Nations Committee on the Rights of the Child (the Committee) as they did not think it was suitable to stay in a children's residential care home.

The Committee found that the Czech Republic did not respect:

BJ and PJ's rights to have their best interests taken as a key consideration.	BJ and PJ's rights not to be separated from their parents.	BJ and PJ's rights to have their views respected.	BJ and PJ's rights to not have their liberty taken away from them.
			

The Committee asked the Czech Republic to make sure that all decisions to separate children from their parents must follow processes that respect children's rights. The Committee also asked the Czech Republic to make sure that similar situations do not happen again to other children in the country.



B.J. and P.J. vs. Czech Republic (Communication No. 139/2021):

Child-friendly version

Section 1. What happened to the children of the complaint?

BJ and PJ are brother and sister, born in 2003 and 2006. They live in the Czech Republic (Czechia). Their parents divorced in 2018 and after that, they started living with their mother. During this time, BJ and PJ were not going to school. BJ was almost 13 years old and the law required him to go to school. Both of them also needed mental health treatment.

The government's child protection office asked the court to separate BJ and PJ from their mother and send them to a residential care home. The court appointed guardians to represent BJ and PJ. The guardians supported the request to send BJ and PJ to a residential care home, although they did not get BJ and PJ's consent and acted against their wishes. In the end, the court decided to send BJ and PJ to the residential care home. The court thought that doing so was necessary, as the children could receive mental health treatment and attend school.

BJ and PJ said that they were not told about the court's decision, neither by their guardians nor the court. They were then taken away from their mother to the children's residential care home.

BJ and PJ presented a complaint to the United Nations Committee on the Rights of the Child (the Committee) because they believed that the Czech Republic did not respect their:

- Right to have their best interests taken as a key consideration
- Right to family guidance as children develop
- Right not to be separated from their parents
- Right to have their views respected
- Right to privacy and protection of family from attack
- Parents as having the main responsibilities for bringing up children
- Right to be looked after properly if separated from family
- Right to health
- Right to education
- Right not to have their liberty removed
- Right to recovery and reintegration

Where can you find the above rights?

The above rights are contained in the United Nations Convention on the Rights of the Child (CRC), which is an agreement between countries to protect children's rights.

How did BJ and PJ present their complaint?

BJ and PJ presented this complaint under the CRC complaints process, known as the "Optional Protocol to the CRC on a communications procedure".



Section 2. What did the Committee decide on the complaint?

1. Can the complaint be accepted and studied by the Committee?

The Committee needs to check if the necessary rules were followed, before it can accept the complaint and study if there was a violation or not. There are two aspects in this case:

- First, BJ and PJ had already tried to use all available options in the Czech Republic to challenge the decision. This made it possible for the Committee to study the claim.
- Second, the Committee decided that some of the claims were strong enough to be examined. These were about:
 - The right to have their best interests taken as a key consideration
 - The right not to be separated from their parents
 - The right to have their views respected
 - The right not to have their liberty removed

However, the Committee did not consider the other claims to be strong enough and did not examine them further.

This phase of checking if the necessary rules were followed is referred to as the '**admissibility**' phase in the Committee's decision-making process.

2. Has the Czech Republic violated children's rights?

The Committee studied the case and found that BJ and PJ were taken from their mother and placed in a care center without enough effort to find better solutions. They were not given a fair chance to speak up, and during their first weeks in the center, they were not allowed to move freely without a good reason. As a result, the Committee found that the Czech Republic has violated:

- BJ and PJ's rights to have their best interests taken as a key consideration
- the rights of BJ and PJ not to be separated from parents
- the rights of BJ and PJ to have their views respected
- the rights of BJ and PJ not to have their liberty taken away



Section 3. What did the Committee tell the Czech Republic to do to fix the situation?

1. What did the Committee tell the Czech Republic to do to help the children of the complaint?

The Committee asked the Czech Republic to give BJ and PJ the necessary payment or compensation to make up for the violations.

2. What did the Committee tell the Czech Republic to do to make sure this doesn't happen to any other children in the country?

To make sure that these violations do not happen in the future, the Committee told the Czech Republic to:

- Make sure that all decisions separating children from parents follow the CRC, specifically:
 - To assess the child's best interests;
 - To make sure that children's views are respected and reflected in decisions as necessary;
 - To create processes to protect the rights of children under the CRC
- Make sure that separation of children from their parents is the last choice after trying other child-friendly options. Such options can be decided through discussions with children and their parents.
- Separation of children from their parents should be for the shortest time possible. It should also be reviewed regularly and stopped as soon as possible.
- If separated, children should be able to stay in contact with their parents.
- Make sure that children always have legal representation in decisions concerning their separation from parents. Children should have both a legal representative and a guardian when there is a possible difference between the views of the two.
- Give training to people working at social services, judges, prosecutors and others on the right of a child separated from their parents.



Annex

Glossary (Definition of key terms)

Children's rights	These are rights that all children have. They make sure that all children are treated fairly, equally and with respect.
Consent	This is the action of agreeing to something, such as a decision.
Compensation	Something, such as money, given to a person to recognise the loss, damage or harm the person suffered.
Complaint	A process that is made when a person claims that their rights have not been respected.
Guardian	A person who protects and represents your interests as a child.
Legal representative	A lawyer who handles your court case. Their responsibilities include speaking on your behalf and preparing the necessary documents submitted to the court.
Violation	When your rights are not respected.
United Nations Committee on the Rights of the Child	A group of experts on children's rights. They meet regularly to discuss how children's rights in the CRC are respected. They also handle complaints under the Optional Protocol on a Communications Procedure.
United Nations Convention on the Rights of the Child (CRC)	An agreement between countries to respect children's rights.



Useful links

The Committee on the Rights of the Child's information for children: [Information for children | OHCHR](#)

Child Rights Connect: [Resources for Children about the Committee's complaints procedure](#)

UNICEF: [Child-friendly version of the Convention on the Rights of the Child](#)

SOS Children's Villages: [Youth-friendly version of Guidelines for Alternative Care of Children](#)

If you have individual inquiries for the CRC Committee, you may contact the Committee on the Rights of the Child using the following ways:

- **Address:** Petitions and Inquiries Section, Committee on the Rights of the Child, Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland
- **Email:** ohchr-petitions@un.org

Child Friendly Version of the UN Convention on the Rights of the Child (excerpt from UNICEF child-friendly CRC)



This child-friendly version was developed using the model outlined in Child Rights Connect's template, "[How to Draft a Child-Friendly Version of an OPIC Case.](#)"

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