

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

Age Determination and Children's Rights

The case of:
R.Y.S. vs. Spain

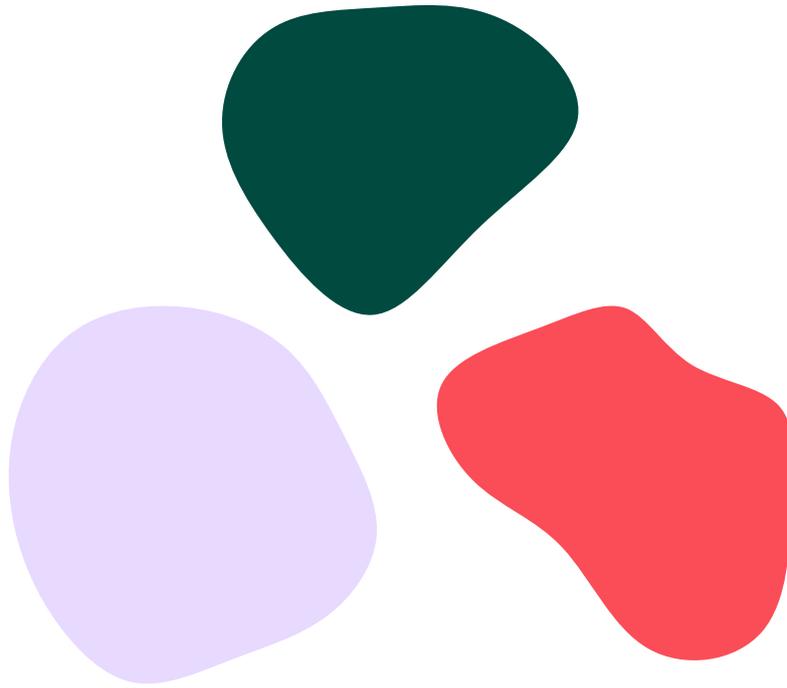


**Universiteit
Leiden**

The original version of this work has been prepared by Iacopo D' Alessio, Anne de Zeeuw, Lizzy Hood and Bahador Sadeghi as part of their studies in the Master of Laws: Advanced Studies in International Children's Rights of Leiden University, Academic Year 2021/2022. The published version concerns an edited version published by the Leiden Children's Rights Observatory.

R.Y.S. v. Spain

(CRC/C/83/D/30/2019)



At the time of its publication, this was a unique judgment because it was the only case decided by the Committee that discussed the impact of age determination procedures for girls.

R.Y.S. was born in 2001 in Cameroon. She fled to Spain to seek asylum in 2017. She arrived alone and tried to make an asylum claim. R.Y.S. was helped by organisation Fundación Raices to complain to the Committee about how she was treated by the Spanish authorities.

The Committee found that Spain did not respect:

- Her best interests and views
- Her right to identity and privacy
- Her right to special protections as an unaccompanied migrant child
- Her right to culture, education, and psychological recovery

The Committee told the Spanish Government to accept R.Y.S. as a child to access her rights. They also asked Spain to make sure this doesn't happen to other children in similar situations.

Content

1: R.Y.S.'s Story = Facts & Complaint

This page explains what happened to R.Y.S, and the rights she said were violated.

2: The Committee's decision = Admissibility & Merits

This page discusses the Committee's decision on whether R.Y.S.'s complaint was made according to the rules, and if Spain had violated R.Y.S.'s rights.

3: Fixing the situation = Remedies & Recommendations

This page shows what the Committee asked Spain to do in order to fix the situation.

Keywords & Links

This page has explanations of the keywords and contains useful links.

Navigating buttons

These buttons are on each page. You can click on them to view the [Keywords & Links](#) page to find explanations for the underlined words.

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1. R.Y.S.'s STORY

What happened to R.Y.S.?

R.Y.S. left Cameroon to go to Spain by herself, as she was fleeing from sexual abuse by her father. After she arrived, the Spanish police brought her to a reception center. She wasn't given a guardian to help her apply for asylum and get the documents she needed.

R.Y.S. explained that she was a child but did not have a real passport to prove her age. Even though she had other documents that showed her age, the Spanish authorities decided to do an age determination. Knowing someone's age is important because as a child you have special protections, under the Convention on the Rights of the Child (CRC). As part of the age determination, the authorities did an age assessment. Spain only used physical examinations. R.Y.S. had to undress and her private body parts were examined. An X-ray was also made, but the results were recorded incorrectly and concluded she was an adult.

The Spanish authorities didn't do a psychological evaluation. This is where the authorities ask questions about the person's life and examine the way they act to estimate how old they are. This is less invasive than physical examinations or X-rays. R.Y.S. didn't have a lawyer or an interpreter with her. She wasn't told the results of her age test and wasn't given the chance to challenge the decision they made. The assessment also didn't mention the abuse she suffered.

The Spanish authorities decided that R.Y.S. was an adult and that she would not be able to challenge this decision. R.Y.S. tried to get this decision removed from her records but this was refused. Since she had not been able to find any solutions in Spain, R.Y.S. brought her case to the Committee on the Rights of the Child (CRC Committee).

R.Y.S.'s Complaint

R.Y.S. made a complaint to the Committee on the Rights of the Child. A complaint is when you explain how your rights might have been violated and how you would like the Committee to help fix the situation. Click below to see the full complaint.

R.Y.S. said these rights were affected by the Spanish authorities:



2.THE COMMITTEE'S DECISION

Can the complaint be accepted and studied by the Committee?

Before the Committee decides whether Spain has violated R.Y.S.'s rights, they must check if the complaint is made according to the rules.

If it is, then the Committee can consider whether rights have been violated. This is called deciding the admissibility of a case. Click to see the full decision.

Merits

The Committee decided that the Spanish authorities had violated R.Y.S.'s rights. They reached this decision by considering previous decisions they have made and other guidance that they produce, called General Comments. In this case, the Committee looked at General Comment No.6, which explained how rights work for unaccompanied children.

The Committee found Spain had violated articles:



Article 16

- The age assessment was a violation because it was invasive and unnecessary to touch R.Y.S.'s private body parts, and it was especially harmful as she is a victim of sexual abuse.
- Spain couldn't explain to the Committee why they had chosen to do invasive physical examinations, instead of other methods that are less invasive, like a psychological evaluation.



Article 3 and article 12

- Spain failed to provide R.Y.S. with free legal representation or a guardian who could defend her interests, particularly when she had to do the age assessment. This meant that her best interests could not be respected and that she could not be heard in the process.



Article 8

- The Committee said that age is an essential part of everyone's identity. R.Y.S. had documents that proved her age, but they were not taken seriously.



Article 20 paragraph 1 and article 22

- R.Y.S. did not get a guardian; a child without a family needs one.
- R.Y.S. did not get special protection; an asylum-seeking child without parents is entitled to this. This is especially harmful because the Committee said that a child who has been sexually abused by her father is clearly in need of special protection.



Article 27 and article 39

- Because Spain said she was an adult, R.Y.S. couldn't go to the school that was suitable for her.
- R.Y.S. did not see a psychologist for a long time after she arrived in Spain. When she received help, they weren't trained to help victims of sexual abuse. They should have been more sensitive to the fact she was a girl, and to her culture.

3. FIXING THE SITUATION

The Committee suggested two ways that the Spanish Government could make things right for R.Y.S. for the violations she suffered. These measures are called remedies. The Committee also made recommendations to ensure this doesn't happen to other migrant children.

Remedies:

1. Accept her real date of birth and change the incorrect date that was on the official documents.
2. Give R.Y.S. special psychological help that is appropriate for victims of sexual abuse.
3. Give R.Y.S. fair compensation (money) to make up for the harm that hurt her feelings and well-being.

Recommendations:

1. During age determination processes, Spain should:

- Properly consider documents that are given by children who are trying to prove their age.
- Give children access to free guardians, legal representatives, and interpreters to help them with asylum procedures.
- Completely prohibit the use of private parts checks to find out a child's age.

2. In general, Spain should make sure that:

- Children can challenge decisions that are made about their age and asylum status.
- People who work with migrant children, like police officers and judges, are properly trained. They should understand children's rights, particularly how they might work differently for girls.
- Children who are victims of violence have access to psychosocial help.

The Committee also asked Spain to report back to them within 180 days with information and evidence to show how they have put the remedies and recommendations in place.

KEYWORDS & LINKS

- 1. Age determination** - The process where authorities make an estimate of someone's age, to know whether they are a child or not. This only happens where a person doesn't have any documents to prove how old they are.
- 2. Age assessment** - This is part of the age determination process. It can involve medical or psychological assessments to work out how old someone is.
- 3. Asylum procedure and application** - A person who has to go away from his or her country (like R.Y.S in this case) can ask for protection in another country. This request is called an asylum application. The asylum procedure is the process that the authorities go through to make a decision on an asylum application.
- 4. Best interests** - When adults are making decisions that affect children, they must consider what is best for the child.
- 5. Challenge** - When a legal decision is made, you have the right to question this decision if you think it is wrong. This is called challenging a decision.
- 6. Convention on the Rights of the Child - CRC:** The legal document that outlines all the rights children have.
- 7. Committee on the Rights of the Child (CRC Committee)** - The group of experts that monitor how countries protect and improve children's rights. They write publications that help to explain how children's rights can be respected and make decisions about complaints.
- 8. General Comment** - A publication from the CRC Committee which explains more about the rights in the CRC and how States can protect them.
- 9. Guardian** - A person who has been appointed by a judge to look after a child.
- 10. Migrant** - A person who moves away from where they usually live. In R.Y.S.'s case she moved to a different country.
- 11. Reception center** - Places to stay for people applying for asylum.
- 12. Refugee** - A person like R.Y.S. who has had their asylum application approved.
- 13. Unaccompanied** - When a child is traveling alone without anyone to look after them.
- 14. Violation** - When a government doesn't respect your rights.
- 15. X Rays** - A special kind of picture that lets doctors see inside the body, such as bones and teeth. Sometimes, to guess a person's age, x-rays are taken of the wrist or jawbones. This can give an estimate of age, but it can be wrong by 2–3 years. Some people don't agree with this method because x-rays can be harmful to children and are not very accurate.

Links

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- [Helplines in your country](#)
- [More information about the CRC Committee](#)
- [Publications for youth](#)

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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