

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

Parent-Child Separation and Children's Rights

The case of:
M.W. (on behalf of V.W.) vs. Germany

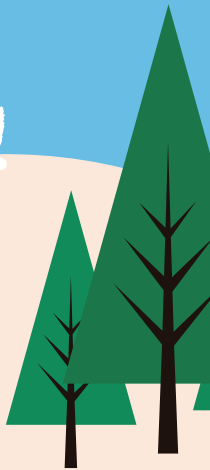


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A Complaint to the Committee on the Rights of the Child

M.W. (V.W.) V. GERMANY



V.W. is a girl from Germany and her parents got divorced in 2014. In 2018, her mother started to keep V.W. away from her father (M.W.), and her father **tried to find solutions in Germany but he could not**. So, her father sent this complaint to the Committee on the Rights of the Child **on behalf of V.W.**, saying that V.W.'s rights were harmed by Germany.

The Committee checked the complaint and found out that V.W.'s father **didn't ask for V.W.'s permission to bring this complaint**. The majority of the Committee decided that they could not look at the complaint without V.W.'s permission and would not be able to decide if V.W.'s rights were respected by Germany.

However, **two members of the Committee disagreed** with the majority and said that the complaint should have been accepted. They also found out that Germany did harm V.W.'s right to not be separated from a parent, right to be raised by both of her parents and her best interests.



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Read the full complaint: [click here](#).

What happened to V.W. in this complaint?



2014

V.W.'s parents got divorced. The court gave V.W.'s mother sole custody, meaning that V.W. got to live with her mother but could still see her father (M.W.).

2017

V.W.'s father was not happy about the custody decision, so he asked the court to reconsider the decision.

2018

V.W.'s mother restricted V.W.'s father from seeing V.W. by moving to a place far away from her father. Her father continued to ask to change the custody decision. The court either rejected or did not respond. During this time, V.W. also expressed that she didn't want to see her father at all.

2019

The court decided that V.W.'s father was not allowed to see her until July 2019. So V.W.'s father asked the court to reconsider the contact decision between him and V.W.

2020

V.W.'s father still couldn't see V.W., and he said that V.W.'s health had gotten worse living with her mother. He asked the court to speed up the process of reconsidering the contact decision.

2021

V.W.'s father complained to the court again to speed up, but the court refused his complaint.

V.W.'s father complained to the Committee that Germany didn't make sure that he and V.W. could maintain contact. This violated V.W.'s rights under the CRC:

- Article 3: Best interests
- Article 4: Making rights real
- Article 5: Receiving family guidance as children develop
- Article 8: Right to identity
- Article 9: Keeping family together
- Article 12: Right to be heard
- Article 14: Freedom of thought and religion
- Article 16: Protection of privacy
- Article 18: Responsibility of parents
- Article 19: Protection from violence

Opinion of Germany



Germany said that as V.W.'s father was not the parent in charge of V.W.'s upbringing, he could not bring a complaint to the Committee on behalf of V.W. without V.W.'s permission. Thus, Germany said that the Committee should not accept the complaint as V.W.'s father did not have V.W.'s permission to bring the complaint on her behalf.

➡ Go to Annex-II to understand who can bring a complaint before the Committee.

Sometimes a complaint can be brought by parents when it is in the best interests of the child. However, V.W. expressed that she was not willing to have contact with her father. Therefore, Germany asked the Committee to reject the complaint.

Germany also pointed out that V.W.'s father did not try to first solve the problem through German courts before coming to the Committee. Therefore, Germany said that V.W.'s father cannot bring a complaint before the Committee.

➡ Go to Annex-II to understand the requirements for bringing a complaint before the Committee.

Decision of the Committee



The Committee found that V.W.'s father did not follow the requirement of getting the permission from V.W.

V.W. also expressed her view that she was not interested in having contact with her father. This was recognized by the Committee and the Committee decided that they could not further look at the complaint.

Thus, this complaint was not accepted by the Committee.



Two Committee members disagreed on the decision. What did they think?

1

This case should be accepted by the Committee

The two Committee members thought that it was hard to tell if it was V.W.'s own wish not to see her father, because she had been under the pressure of her mother. Even V.W.'s legal guardian couldn't contact V.W. during the time, and V.W.'s health also got worse after they moved away to another city.

Based on these facts, it was hard to tell V.W.'s real opinion. So the Committee should not decide that the case was not in her best interests, and the case should be accepted by the Committee.

2

Germany violated V.W.'s right

Article 9 (3): After V.W.'s mother stopped her father from seeing her, her father went to court to solve this problem. But Germany took a very long time and did not come up with an updated arrangement for V.W. to see her father. So the two Committee members thought that Germany violated V.W.'s right to keep in regular contact with her father.

Article 3: Because V.W. could not keep in contact with her father, she was only under her mother's influence. Besides, there were no other opinions by other experts to look at this issue, so Germany didn't consider her best interests.

Article 18: Germany didn't do their best to help both V.W.'s parents in taking care of V.W.



More information about the CRC and the Committee

What is the CRC?

The CRC is short for the Convention on the Rights of the Child. It explains who children are, what rights children have, and the responsibilities of governments. It is an agreement by many countries to protect children's rights.



Who is the Committee?

The Committee (Committee on the Rights of the Child) is a group of 18 experts from around the world. They are responsible for giving recommendations to countries on how they can improve children's rights and receive complaints about children's rights violations.



How do you bring a complaint to the Committee?

Your country must first sign an agreement called the "Optional Protocol on a Communications Procedure". If you believe that your country has failed to protect your rights, you or your representatives can write a complaint to the Committee.



Why do other members of the Committee express a different opinion?

The Committee takes a vote for the final decision of each complaint. If some members of the Committee do not agree on that decision, they can write their different opinion about the complaint. Their opinion will be put at the end of the document of the final decision.



The process of a complaint by the Committee



Who can bring a complaint to the Committee?



A child or a group of children can bring a complaint before the Committee.



A child or a group of children can bring a complaint with the help of adults.



An adult or a group of adults can bring a complaint with the permission of the child or children.



An adult or a group of adults can bring a complaint without the permission of the child or children, if one can give good reasons for not getting the permission of the child or children.

How can a complaint be accepted by the Committee?

For the complaint to be accepted, there are a few requirements that must be followed. Some of the important requirements are:

- The complaint must be in written form.
- The complainant has to find solutions for his/her problem in the courts of the country first.
- The complaint must be brought before the Committee within one year after they look for a solution in the courts of the country.

What happens after the complaint has been accepted by the Committee?

Once the Committee accepts the complaint, the Committee looks at all the facts of the complaint and comes to a decision and recommendations for the country.



Key words to know

- **Best interests** When adults make decisions that affect children, they should always think about what is best for the child.
- **Children's rights** These are human rights that apply only to children (people that are 18 years old or younger). Children have special rights that adults don't, to make sure that they are well looked after by their parents and the government.
- **Complainant** A person who writes the complaint.
- **On behalf of** Doing something for someone; or acting as their representative.
- **Rights violation** This is when the government does not respect, protect or fulfill your rights.
- **Sole custody** When a parent has sole custody of a child, it means that the parent is responsible for the daily upbringing of the child.

Useful sources

- » Read the CRC: [read here](#)
- » Learn about the Optional Protocol on the Communication Procedure: [read here](#)
- » Learn more about the CRC and the Committee: [here](#)
- » Check out Child Rights Connect, an organization working in promoting children's rights: [enter from here](#)

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.](#)"

This is an edited version of the original student work, for which the Leiden Children's Rights Observatory assumes full editorial responsibility. This version does not reflect the views of the UN Committee on the Rights of the Child or any of its members, nor does it represent the views of Leiden University or any other entities with which the Leiden Children's Rights Observatory is currently or has previously been affiliated.

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