

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

Forced Return to Another Country and Children's Rights

The case of:
H.K. (on behalf of S.K.) vs Denmark



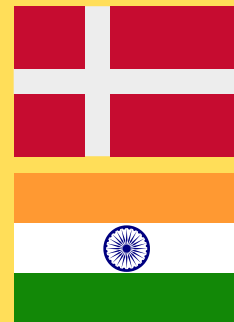
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SUMMARY

H.K. (on behalf of S.K.) vs Denmark



S.K. is a girl who was born in 2017. She is Indian, but she was born in Denmark, where she lives with her mother. In 2019, her mother, H.K., told the Committee on the Rights of the Child about their case. She did this because the Danish government wanted to send both S.K. and her back to India (**deport*** them). H.K. did not agree and explained why she and S.K. would not be safe there.

The Committee found that Denmark did not respect the following rights from the Convention on the Rights of the Child:

- Article 3: S.K.'s best interests as a child;
- Article 22: S.K.'s rights as a refugee child;
- Article 6: S.K.'s right to life, survival and development;
- Article 37(a): S.K.'s right to protection from torture and cruel treatment.



The Committee first asked the government of Denmark to pause its plans to send H.K. and S.K. away while the complaint was being studied. After looking at the case, the Committee told Denmark to fix the situation so that all of S.K.'s rights would be respected. This meant the Danish government had to look again at its earlier decisions to send H.K. and S.K. back and make sure that S.K.'s best interests were considered. Denmark had to tell the Committee what it planned to do within 180 days.

This document explains the case of H.K. (on behalf of S.K.) vs Denmark:

- What happened to the child of the case;
- What the Committee thought of this case;
- What the Committee told the government of Denmark to do;
- Where you can learn more about children's rights and the Committee.

You can read the full case decision in English [here](#).

What happened to the child of the complaint?

H.K. is the mother of S.K. They live together in Denmark. They are both Indian, and S.K. was born in Denmark. The Danish government wanted to send H.K. and S.K. back to India because the reason they were allowed to stay in Denmark no longer applied. H.K. thought going to India would be dangerous for S.K. She asked for asylum in Denmark, which means asking the country for help and protection. The Danish government said no. H.K. believed that Denmark did not protect S.K.'s rights for three reasons:

- When H.K. was pregnant, S.K.'s father treated her badly. He said he would do mean and dangerous things to both H.K. and S.K. if they went back to India. H.K.'s family would not protect them from him.
- The Indian government also would not keep them safe. When H.K. had asked them for help before, they did nothing. There were also stories about other children in similar situations who did not get help or protection from the Indian government.
- The Danish government did not think enough about what was best for S.K. when H.K. asked for asylum. After saying "no" the first time and looking at the case again, the government still did not change its mind. H.K. felt she was treated unfairly.

The Danish government did not agree with H.K.'s reasons. It said "no" to the asylum application because it thought S.K. would be safe in India. Denmark gave these reasons:

- To get asylum, a person must follow certain rules. For example, they might need to be part of a religious or political group that is in danger in their home country. H.K. and S.K. did not meet these rules.
- The government found it hard to believe H.K.'s stories. She told them several times, but the details were different each time. She also could not show the mean messages her husband had sent her.
- The government said H.K. did not clearly explain why her daughter would be in danger in India. It also said it had been careful and fair when it decided to say "no" to the application.

The mother of S.K. presented a complaint to the Committee on the Rights of the Child. This means she is the "applicant" of the complaint. She complained because she believed that by saying "no" to their asylum request and sending her and S.K. back to India, the Danish government was not respecting two rights from the Convention on the Rights of the Child: Article 3 (S.K.'s best interests) and Article 22 (S.K.'s rights as a child asking for asylum).

The UN Convention on the Rights of the Child

This is an important agreement by countries who have promised to protect children's rights. It explains who children are, all their rights, and the responsibilities of governments. All the rights are connected, they are all equally important and they cannot be taken away from children.

Article 3: best interest of the child

When adults make decisions, they should think about how their decisions will affect children. All adults should do what is best for children. Governments should make sure children are protected and looked after by their parents, or by other people when this is needed. Governments should make sure that people and places responsible for looking after children are doing a good job.

Article 22: rights of refugee children

Children who move from their home country to another country as refugees (because it was not safe for them to stay there) should get help and protection and have the same rights as children born in that country.

What did the Committee decide on the complaint?

Can the complaint be accepted and studied by the Committee?

Whenever the Committee receives a complaint, it must first check if some rules were followed to accept the complaint and study if there was a **violation** or not. This stage is called the “**admissibility**”. The Committee found that H.K.'s case was admissible. This meant that H.K. was allowed to go to the Committee to complain about the Danish government's actions.

After the Committee accepts the complaint, it then checks if there was a violation. This step is called “**merits**.” While studying this case, the Committee found two more child rights that S.K.'s mother had not mentioned but were important to discuss. These were Article 6 and Article 37(a) of the Convention on the Rights of the Child. The Committee can look at other rights, even if the person making the complaint does not mention them.

Article 6: right to life, survival and development

Every child has the right to be alive. Governments must make sure that children survive and develop in the best possible way.

Article 37: children in detention

37(a): No child should be killed, tortured, treated cruelly.

What happened to the child while the Committee studied the case?



To protect S.K., the Committee told the Danish government not to send S.K. and H.K. back to India while the Committee was still studying the case. This is called an interim measure. This measure pressed the pause button on the time so that the situation of S.K. would not get worse. Sometimes, interim measures can make the situation so much better that the reason for the complaint disappears.

Has the government of Denmark violated children's rights?

The Committee found that Denmark did not respect the following rights from the Convention on the Rights of the Child:

- Article 3: S.K.'s best interests as a child;
- Article 22: S.K.'s rights as a refugee child;
- Article 6: S.K.'s right to life, survival and development;
- Article 37 (a): S.K.'s right to protection from torture and cruel treatment.



What did the Committee tell the government to do to fix the situation?

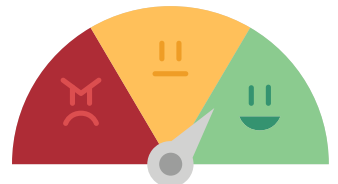


Because the government did not respect S.K.'s rights, the Committee told them to fix the situation. These actions to make things right are called **recommendations** or **remedies**. The Committee told the Danish government to think again about the decision to send S.K. and her mother back to India. Denmark had to consider S.K.'s best interests as a very important factor and think about the specific **facts of her case**.

The Committee wanted to hear from Denmark quickly — within 180 days — about what steps it had taken to respect S.K.'s rights. Denmark also had to share this case and the decision in the Danish language, so that people in Denmark can learn about it and know more about their rights.

What did the government do?

The Committee checks with governments to see what steps they have taken to respect children's rights after a decision is made. This is called the "follow-up." The Committee found that the steps taken by the Danish government were good enough. This meant the Committee was satisfied and believed that the Danish government was respecting children's rights.



Did all the Committee members agree?

Three of the 18 members did not agree. These three members shared their "dissenting opinions", which means they had different views from the larger group.

First, they thought that because H.K.'s claims about Articles 3 and 22 already met all the rules to be accepted, the Committee did not need to study other children's rights. Second, they believed that the Danish government had done a good job checking if H.K. and S.K. would receive help from the Indian government. They said the government had made its decision on the asylum application in a fair and careful way.

These three members found that the Danish government did respect S.K.'s best interests as a child and her rights as a child asking for asylum. Because they were a small group, their opinion did not change what the Committee told the government to do.

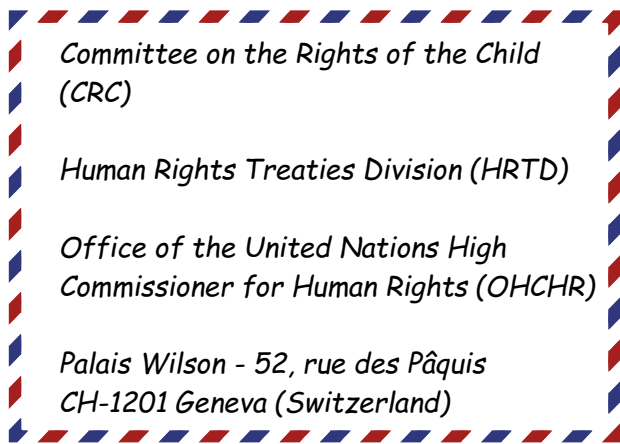
Annexes

Do you want to know more about the Committee and the Convention?

- Find more information in child friendly language [here](#).
- Read the Convention in child friendly language [here](#).

How to contact the Committee yourself:

- You can send a letter to the address below, or send an e-mail:



ohchr-crc@un.org

If your rights are violated or are not respected, you can read [here](#) to find out if you are allowed to make a complaint (if your case can be admissible or accepted). The steps to take may be difficult for children to do alone. This website also explains how you can receive help to write the complaint.

Glossary

Admissibility/ admissible	When the Committee receives a complaint, it has to first check if some rules were followed that allow it to accept the case and study if there was a violation or not. This stage is called the “admissibility”. For example, if the children have not tried to find a solution in their country, the Committee cannot accept the complaint. This means that the Committee will not be able to decide if there was a violation or not. The Committee will write a decision saying those rules were not followed and it will call the complaint “inadmissible”.
Deportation	When a child from country A is in country B, the government of country B may say that the child has to go back to country A. When the child or family does not agree, they may be sent back to country A by country B against their wishes. This is called "to be deported", or a "deportation".
Facts of the case	This is what happened to the child and why the child or the applicant believe that their rights have not been respected by the government.
Merits	This is the stage where the Committee is able to look if there was a violation or not of children's rights.
Recommen- dations or remedies	When the rights of a child have not been respected in a country, the Committee can ask the government of the country to take actions to fix this.
Violation	When a government does not respect your rights.

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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