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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. 86/2019*, **

Communication submitted by:	D.R. (represented by counsel, Sarah Vincent)
Alleged victims:	G.R., H.R, V.R. and D.R.
State party:	Switzerland
Date of communication:	15 May 2019
Date of adoption of Views:	31 May 2021
Subject matter:	Deportation to Sri Lanka; access to medical care
Procedural issues:	Non-exhaustion of domestic remedies; lack of substantiation of claims; justiciability of Convention rights
Substantive issues:	Best interests of the child; effective remedy; right to health; torture and ill-treatment
Articles of the Convention:	3, 4, 6 (2), 24 and 37 (a)
Article of the Optional Protocol:	7 (e)–(f)

1.1 The author of the communication is D.R., born in 1982. He submits the communication on behalf of his children, G.R. and H.R., born in 2019 and 2014 respectively, his wife, V.R., born in 1990, and himself. All are nationals of Sri Lanka. The author and his family are facing removal to Sri Lanka. He claims that their removal would constitute a violation of their rights, including G.R.'s rights under articles 3 and 4 of the Convention. Although not formally cited by the author, the complaint also raises, in substance, issues under articles 6 (2), 24 and 37 (a) of the Convention. The Optional Protocol entered into force for the State party on 24 July 2017. The author and his family were not represented by counsel at the time of submitting their initial communication. They have been represented by counsel since 16 August 2019.

1.2 On 20 May 2019, pursuant to article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, requested the State party to refrain from

* Adopted by the Committee at its eighty-seventh session (17 May–4 June 2021).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Rinchen Chophel, Bragi Gudbrandsson, Philip Jaffé, Sopio Kiladze, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, Zara Ratou, Aïssatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Benoit Van Keirsbilck.

returning the author and his family to Sri Lanka while their case was under consideration by the Committee.

1.3 On 22 October 2019, the working group on communications, acting on behalf of the Committee, decided to reject the State party's request that the admissibility of the communication be considered separately from its merits.

Facts as submitted by the author

2.1 On 30 June 2014, the author, V.R. and H.R. filed an application for asylum with the State Secretariat for Migration of Switzerland, which, on 5 August 2015, rejected their application and ordered their removal to Sri Lanka. An appeal to the Federal Administrative Court was dismissed on 13 September 2016. On 3 March 2017, the European Court of Human Rights declared the author's application inadmissible.

2.2 On 29 March 2019, the author and his family submitted a request to the State Secretariat for Migration for reconsideration of their asylum application, arguing that G.R., who was born two months earlier, would suffer irreparable harm upon his transfer to Sri Lanka, in violation of articles 3 and 4 of the Convention. They submitted a medical certificate dated 12 March 2019 from a paediatrician stating that at birth he was unable to maintain a healthy body temperature and a week later he was diagnosed with congenital hypothyroidism, which led to the initiation of hormone replacement therapy the same day. Various examinations showed a completely inactive thyroid gland and slow bone growth. His hormone treatment includes several mixed substances that he must take daily and for life. According to the paediatrician, he will need blood tests. His treatment with Euthyrox will need to be adjusted every three months and this care, crucial for his development and growth, must be delivered by a specialist in paediatric endocrinology. If proper care cannot be provided, either due to a lack of medical resources or a lack of financial resources, G.R. will suffer irreversible damage, potentially to the point of not being able to be self-sufficient in the future. The medical certificate also mentions that being sent to a country like Sri Lanka without resources and without clear and secure organization of his medical care in advance makes proper care almost impossible for this "extremely severe disease" if it is not properly treated. The paediatrician says that her paediatric endocrinologist colleagues confirm how dangerous it would be for G.R.'s future to be sent to a country "with so many uncertainties about the possible care".

2.3 In addition, the request for review referred to the fact that V.R. needs treatment for her recurrent depressive disorder accompanied by psychotic symptoms (auditory hallucinations). The request also referred to information indicating that access to health care is not guaranteed in Sri Lanka and that treatment in private institutions is very expensive and the costs are almost entirely borne by the patients. Moreover, although the services provided by State institutions are generally free of charge, a whole series of expenses may still be incurred. Often, the necessary drugs and equipment are not available in public institutions and patients have to buy them from private pharmacies at a very high cost. In addition, the public health sector is often unable to provide adequate treatment for chronic non-communicable diseases. Affordable drugs and treatment are usually only available in public medical facilities. The waiting lists for certain diagnostics are often very long. In addition, the supply of free medicines is not ensured, as stocks often run out.

2.4 On 24 April 2019, the State Secretariat for Migration decided not to take up the request for review on the grounds that the author and his family had not observed the rule that such a request must be filed within 30 days of the discovery of the grounds for review, as they had learned that G.R. was suffering from hypothyroidism on 24 January 2019. The State Secretariat for Migration also noted that it had already ruled on the mental health of V.R. In view of the mandatory nature of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the State Secretariat for Migration carried out a preliminary examination to determine whether the application contained facts or grounds of considerable significance that could seriously raise, from an objective point of view, the question of the existence of obstacles to the enforcement of removal under international law. It recalled the framework established by the European Court of Human Rights in *N. v. the United Kingdom* (Application No. 26565/05), *D. v. the United Kingdom* (Application No. 30240/96) and *Paposhvili v. Belgium* (Application No.

41738/10) and considered that the city of Colombo had sufficient medical facilities, including public hospitals and private clinics, to treat G.R. Thus, the State Secretariat for Migration concluded that there were no obstacles to the enforcement of their removal.

Complaint

3.1 The author and his family argue that G.R. will not be able to obtain the necessary medical treatment for his hypothyroidism in Sri Lanka. Even if this treatment exists, the author will not be able to pay for it because it will be too expensive. He asks that G.R.'s right to medication in Switzerland be respected. They also argue that V.R. too needs to continue her medical treatment in Switzerland and have provided a certificate to show that she is receiving psychiatric care and psychotherapy. He also cites his own medical situation, referring to a medical certificate that mentions a "very likely" lack of access in Sri Lanka to the necessary care and medication for his type 2 diabetes, high blood pressure, high cholesterol and mixed urinary disorders. In addition, the family arrived in Switzerland when H.R. was two months old and he is now attending school in Switzerland. They remain fearful of returning to Sri Lanka for political reasons.

3.2 The author and his family argue that they were unable to submit the request for review within 30 days of the discovery of G.R.'s congenital hypothyroidism because of a delay in receiving the medical certificate and because they had difficulty communicating with the doctors in French. He did not appeal against the decision of 24 April 2019 because he could not afford a lawyer and the association that had helped him free of charge refused to draft an appeal.

State party's observations on admissibility

4.1 In its comments of 16 July 2019, the State party notes that, on 5 August 2015, the State Secretariat for Migration refused the application for asylum of the author, V.R. and H.R. on the grounds that their statements were not credible, a decision confirmed by the Federal Administrative Court on 13 September 2016. On 17 November 2016, the State Secretariat for Migration declared inadmissible an initial application for review of the decision on the grounds that documents from the Human Rights Commission of Sri Lanka, submitted as new facts, had not been submitted within the statutory 30-day period since the grounds for review had been discovered. In addition, a preliminary examination under article 3 of the European Convention on Human Rights was not found to present obstacles to the enforcement of removal. On 1 December 2016, the Federal Administrative Court quashed that decision on the grounds that the application should have been treated as a request for review but proceeded to declare the application inadmissible in view of the absence of new facts.

4.2 The State party notes that, on 16 November 2018, the State Secretariat for Migration refused to take up a second request for review, which was based on the author's and V.R.'s medical problems and on the latter's pregnancy, because the 30-day time limit had not been observed. On 13 December 2018, the Federal Administrative Court declared the appeal inadmissible, finding from the outset the request for review and the appeal to be frivolous.

4.3 The State party further notes that, following the submission of the third request for review and the inadmissibility decision of the State Secretariat for Migration of 24 April 2019, no appeal was lodged within the statutory time limit of five days.

4.4 The State party notes that the author appears to argue that the family's removal would violate the rights of the child because of G.R.'s medical condition and his lifelong dependence on specific medicines and therapies that are not available or affordable in Sri Lanka. The rest of the communication refers to the author's and V.R.'s health problems and to H.R.'s integration in Switzerland, without allowing for a connection to be drawn between these facts and the specific allegations regarding rights guaranteed under the Convention.

4.5 The State party argues that the communication is inadmissible because domestic remedies have not been exhausted given that no appeal was brought against the State Secretariat for Migration decision of 24 April 2019. The author has not claimed that he was unable, for excusable reasons, to comply with the time limit for appeal. Furthermore, he does not argue that an appeal to the Federal Administrative Court would not be effective. The decision of the State Secretariat for Migration duly states the reasons on which it is based and

does not contain any formal defects; it also sets out the legal remedies as well as the five-day time limit and the requirements to be fulfilled. Moreover, the family had already lodged three previous appeals with the Court and was therefore aware of the procedure to be followed.

4.6 The State party notes that the appeal to the Federal Administrative Court against the decision of the State Secretariat for Migration of 24 April 2019 constituted an ordinary remedy. The Court should have ruled on the admissibility of the application and would have had the possibility of annulling the decision and requiring the State Secretariat for Migration to rule on the application for review. This remedy was therefore liable to provide effective redress. The State party recalls that the Committee against Torture has confirmed that the fact of submitting an appeal to the Court outside the time limit, without justifying the failure to comply with this formality, implies that domestic remedies have not been exhausted.[1] The financial grounds are not admissible, as the author could have applied for free legal aid[2] if he felt he could not afford to pay his counsel's fees or bear the costs of the proceedings. In addition, the Court may, in exceptional cases, fully remit the costs of the proceedings normally borne by the unsuccessful party. The State party asserts that the question as to whether the author might be granted legal aid because of his lack of means or whether the costs of the proceedings might be waived must be decided by the judge and not the author himself. The State party adds that, in accordance with the subsidiarity principle, it is primarily for the national authorities to remedy any violation of the Convention.

4.7 The State party argues that the communication is inadmissible also on the grounds that it is not sufficiently substantiated. It maintains, firstly, that the communication does not specify who should be considered the author, or authors, or how the complaints entail a possible violation of the rights guaranteed by the Convention. Secondly, it is only in the light of the content of the third request for review that it is possible to try to understand the wishes of the person who was considered to be the author of the communication, although the subject matter of that request was different from that of the present communication. The State party notes that, in the communication under examination, the Committee had to send a questionnaire to the author to understand the reasons for the communication and that the "particularly laconic" response cannot remedy the shortcomings of the initial submission. Moreover, the communication sets out the facts in a simplified manner and refers to factual circumstances that do not concern G.R. and his rights.

Author's comments on the State party's observations on admissibility

5.1 In his comments of 2 October 2019, the author argues that domestic remedies have not been exhausted and asserts that there are excusable grounds for the failure to observe the time limit for appealing against the State Secretariat for Migration decision of 24 April 2019. After he was notified of that decision, he immediately went to a free legal aid office, which refused to draft an appeal because of its workload. As the five-day deadline was very short and the office hours in Geneva were limited, he was unable to contact another free legal aid office in time. During that same period, V.R. and G.R. were in hospital in critical condition, which means that the author had to make these arrangements and visit his wife and child in the hospital at the same time. Furthermore, he did not have the means to pay for a lawyer. In addition, he does not speak French, did not understand the decision and does not know the procedure for drafting an appeal, as previous appeals had been drafted and submitted by a professional legal representative. He claims that he was unable to apply for free legal aid, since it is only after an appeal has been lodged that the Federal Administrative Court can decide whether he is indigent. In the light of the fact that the Optional Protocol recognizes the real difficulties that children may have in pursuing available remedies in the event of a violation of their rights, the requirements for the exhaustion of domestic remedies should be relaxed in this case.

5.2 As to the State party's observation that the communication is not sufficiently substantiated, the author argues that it should be borne in mind that he drafted the initial submission and his response to the Committee's questions without representation, in a

[1] *D.B. v. Switzerland* (CAT/C/66/D/820/2017), paras. 6.2–6.3.

[2] The State party refers to article 65 of the Federal Act on Administrative Procedure of 20 December 1968.

language that is not his first language. Thus, the requirements in terms of form, conclusions and reasoning should not be overly demanding. In addition, it was possible for the Committee and the State party to understand his claims, to identify the complaints and to understand the reasons. The communication is therefore sufficiently substantiated.

State party's additional observations on admissibility and the merits

6.1 In its comments of 14 February 2020, the State party notes that the time limit for appealing against the State Secretariat for Migration decision of 24 April 2019 was five working days upon notification. Since the author was familiar with the procedures to be followed, he cannot claim that he could not have turned to another free legal aid office. The State party disputes that he does not speak French, as he had previously claimed that he was taking intensive, level-A1 French courses and that "several people have confirmed that he now has a very good level of French". The State party reiterates its observations on the lack of financial means to lodge an appeal and on the subsidiarity principle, pointing out that the complaints raised have never been brought before the Federal Administrative Court. Although the Optional Protocol recognizes that children may have real difficulties in pursuing available remedies, the circumstances of the present case and the grounds put forward do not justify a relaxation of the requirements in this regard. The State party reiterates that the communication is not sufficiently substantiated.

6.2 The State party considers that articles 3 and 4 of the Convention do not provide a basis for any individual right and are therefore not directly applicable.[3] With the exception of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the State party does not see any provision relevant to the complaints that grants G.R. an individual and directly applicable right. With regard to article 3 of the Convention, the State party notes that it was the failure to comply with the legal time limit of 30 days that prevented the State Secretariat for Migration from taking action on the request for review. However, the State Secretariat for Migration examined, as a preliminary question, whether the application contained facts or grounds of considerable significance that could seriously raise, from an objective point of view, the question of the existence of obstacles to the enforcement of removal. With respect to the medical issues raised, the State Secretariat for Migration concluded that the city of Colombo had sufficient medical facilities, including public hospitals and private clinics, to treat G.R. Thus, the State Secretariat for Migration properly determined and assessed the best interests of the child. As to article 4 of the Convention, the State party considers that, in the present case, its authorities have taken the measures necessary to implement the Convention rights. Insofar as the communication concerns economic, social and cultural rights, the State party refers to article 10 (4) of the Optional Protocol.

6.3 With regard to the general claims made by the author, the State party submits that the author does not demonstrate in any way that it would not be possible to obtain the necessary medical treatment for G.R. and that, on the contrary, hypothyroidism is a common disease and the necessary medical treatment is available and accessible in Sri Lanka. According to available information, the Sri Lankan authorities are well aware that congenital hypothyroidism is the most common cause of intellectual disabilities in children.[4] The authorities have also introduced a national programme for screening newborns for congenital hypothyroidism and guidelines for the treatment of hypothyroidism.[5] Moreover, there are several studies by the medical community in Sri Lanka on the subject. The State party concludes that treatment for hypothyroidism is available.

[3] The State party makes a general reference to the jurisprudence of the Federal Supreme Court.

[4] Gerard Lucas, "Guidelines on management of congenital hypothyroidism in Sri Lanka", *Sri Lanka Journal of Child Health*, vol. 44, No. 2 (2015), pp. 75–76.

[5] Sujeewa Amarasena and Manjula Hettiarachchi, "Establishment of national programme on newborn screening for congenital hypothyroidism", *Sri Lanka Journal of Diabetes, Endocrinology and Metabolism*, vol. 8, No. 2 (2008), pp. 13–18; https://old.slcp.lk/management-of-congenital-hypothyroidism.

6.4 With respect to the argument that medical treatment is not affordable, the State party notes that free access to health care is a priority of the Government of Sri Lanka.[6] Furthermore, the author claimed before the Swiss authorities that he would like to be able to work and be financially independent. The State party notes that the author lived and worked in Colombo before leaving the country, has received academic and vocational training and speaks Sinhalese. He is therefore able to earn a living in Sri Lanka and support G.R. In addition, the author and his family can apply for return assistance in the form of 1,000 Swiss francs per adult and 500 Swiss francs per minor, as well as additional financial assistance of up to 3,000 Swiss francs to finance an individual reintegration project. For special reintegration needs, additional assistance of up to 5,000 Swiss francs and, in cases of health problems, medical assistance upon return may be granted.[7] The author may also turn to the Sri Lankan authorities if necessary. The State party concludes that the return of G.R. would not amount to a violation of the Convention.

6.5 Recalling the principle of non-refoulement,[8] the State party argues that the State Secretariat for Migration has examined, from the point of view of article 3 of the European Convention on Human Rights, whether medical problems are an obstacle to the removal of G.R. It has referred to the jurisprudence of the European Court of Human Rights and concluded that the very exceptional cases that may raise an issue under article 3 of the European Convention on Human Rights correspond to a high threshold for the application of this provision in cases concerning the removal of seriously ill foreigners. The State Secretariat for Migration concluded in the end that Colombo had sufficient medical facilities. Considering that the necessary medical care is available and affordable in Sri Lanka and that there is no real, serious and concrete risk to G.R.'s health, the State party considers that his removal would not violate the principle of non-refoulement. Lastly, Sri Lanka is also a party to the Convention and if the petitioner believes that Sri Lanka is in breach of its obligations towards G.R., he will be able to pursue his claims with the Sri Lankan authorities.

Authors' additional comments on the State party's observations

7.1 In his comments of 16 June 2020, the author claims that his A1-level French courses did not enable him to understand a legal decision on his own, let alone draft an appeal. Furthermore, the decision of the State Secretariat for Migration of 24 April 2019 states that the use of an appeal will not have suspensive effect. According to the Committee's jurisprudence, any appeal that does not suspend the execution of the removal decision cannot be considered effective.[9] Article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

7.2 The author notes that, according to the Committee, article 3 (1) of the Convention is directly applicable and can be invoked before a court.[10]

7.3 The author takes issue with the assertion that it was the failure to observe the statutory time limit of 30 days since the discovery of grounds for review that had prevented the State Secretariat for Migration from considering the request for review. He points out that, according to the jurisprudence of the Federal Administrative Court, the discovery of the grounds for reconsideration implies that the applicant has sufficiently reliable knowledge of the new fact and the medical problems to be able to invoke them, and it must be possible to offer proof of this by producing a medical certificate. The diagnosis of hypothyroidism was made on 24 January 2019, but at that time the parents could not realize the full implications. A medical certificate was required to prove this new fact. Given that the 12 March 2019

[6] World Health Organisation, "Primary health care systems (PRIMASYS): case study from Sri Lanka", abridged version (2017), p. 3.

[7] See www.sem.admin.ch/sem/en/home/international-rueckkehr/rueckkehrhilfe/individuelle-rkh.html.

[8] The State party refers to joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 45, and general comment No. 6 (2005) of the Committee on the Rights of the Child, para. 27.

[9] *N.B.F. v. Spain* (CRC/C/79/D/11/2017), para. 11.3.

[10] General comment No. 14 (2013), para. 6 (a).

certificate was submitted on 29 March 2019, the State Secretariat for Migration should have taken up the request for review.

7.4 The author argues that, in the light of G.R.'s vulnerability, a migrant child suffering from a disease whose interruption of treatment would have irreversible consequences, simply to allege the existence of medical facilities in Colombo does not constitute sufficient grounds under article 3 of the Convention.

7.5 The author notes that none of the documents cited by the State party refer to the effectiveness of access to treatment for congenital hypothyroidism in Sri Lanka. He argues that the State party makes access to medical care for G.R. dependent on the author's ability to pay for such care. No guarantee has been given that G.R. will be able to have access to care for an indefinite period. A high proportion of health-care costs in Sri Lanka are borne by patients and health insurance plays almost no role. A medical certificate dated 11 June 2020 indicates that the annual cost of G.R.'s medical care is 2,500 Swiss francs.[11] The likelihood that the author, who worked in the restaurant business, will be able to support his family and pay for G.R.'s treatment in Sri Lanka seems uncertain. In addition, the author himself requires medical treatment. The fact of receiving individual return assistance does not provide any long-term guarantee. Moreover, return assistance is not meant to be used exclusively to cover medical needs. Furthermore, G.R. could be put at risk by V.R.'s emotional fragility. According to the author, the State party violated article 3 of the Convention by considering that G.R. could be removed to Sri Lanka.

7.6 In the absence of any clear and secure guarantee from the State party regarding the continuation of G.R.'s treatment in Sri Lanka, and given that he has already begun this treatment, which is economically tenable for Switzerland, the State party should have allowed him to continue his treatment in Switzerland in order to implement the principle of the best interests of the child and the prohibition of torture. He claims that the State party has thus violated article 4 of the Convention.

7.7 The author argues that if G.R.'s medical care was not properly delivered, this would cause him irreparable harm. As it is not possible to ensure proper care for congenital hypothyroidism in Sri Lanka, G.R.'s removal would violate the principle of non-refoulement. The author adds that this principle is intended to ensure that he does not have to pursue his claims before the Sri Lankan authorities.

State party's additional observations

8.1 In its submission of 23 June 2020, the State party notes that the author could have asked the Federal Administrative Court to restore the suspensive effect of his appeal or, as an interim measure, to suspend the execution of the removal.[12] If this had been the case, no steps towards removal would have been taken before the Court ruled, which it would have been required to do without delay.

8.2 The State party reiterates that hypothyroidism is a common disease and that it is completely treatable in Sri Lanka, as the necessary medical treatment is available and accessible. It also reiterates that free access to medical care is a priority of the Government of Sri Lanka and that the author will be able to earn a living and apply for individual return assistance. Furthermore, the author fails to demonstrate that G.R. would be deprived of the necessary treatment in Sri Lanka and does not provide any concrete evidence to support this. In particular, he does not allege that he sought medical treatment in Sri Lanka and that this request was refused. The State party argues that, in these circumstances, safeguards are not necessary. Furthermore, it is not relevant to compare the costs of medical treatment in Switzerland with those in Sri Lanka and the question of costs is not decisive, since no obligation to bear such costs can be inferred from the Convention.

[11] The certificate also states that if treatment and follow-up are interrupted, there is a high risk of developing severe intellectual disabilities with an inability to attend vocational training. Slow growth and failure to reach full adult height along with bone, muscle and heart problems can be expected.

[12] The State party refers to articles 55 (3) and 56 of the Federal Act on Administrative Procedure of 20 December 1968.

Author's comments on the State party's additional observations

9.1 In his comments of 22 July 2020, the author notes that article 55 of the Federal Act on Administrative Procedure does not specify the grounds on which the appellate authority may restore suspensive effect to an appeal and that it must weigh the interests, over which it has broad discretion. It will only restore the suspensive effect if it is prima facie clear that the first authority did not consider or clearly misjudged overriding interests or if the solution adopted inadmissibly prejudges the final judgment and thus circumvents federal law. Specifically, there must be compelling reasons for immediate enforcement of the decision, such as the threat of significant harm, without requiring there to be extraordinary circumstances. Furthermore, the withdrawal of suspensive effect must be proportionate. The author asserts that, in the present case, it is hypocritical for the State party to argue that the author only had to request suspensive effect, in the absence of any assurance that suspensive effect would be granted. The author notes that the State Secretariat for Migration considers that, in the jurisprudence of the European Court of Human Rights, asylum appeals do not offer effective protection against deportation in the absence of suspensive effect.[13]

9.2 The author argues that it was appropriate to present the annual cost of G.R.'s treatment since economic considerations are central to the issue of access to this treatment. He reiterates that, in view of the serious and irremediable risks to G.R.'s health, the absence of any guarantee of access to medical treatment for G.R. constitutes a violation of article 3 of the Convention and the principle of non-refoulement.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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, whether the communication is admissible under the Optional Protocol.

10.2 The Committee notes the State party's argument that the communication is inadmissible under article 7 (e) of the Optional Protocol in the absence of an appeal to the Federal Administrative Court against the decision of the State Secretariat for Migration of 24 April 2019. The Committee also notes that the lodging of such an appeal would not have automatically suspended the execution of the decision of the State Secretariat for Migration. It further notes that, according to the State party, the author and his family could have requested the Court to grant suspensive effect to such an appeal or to suspend the execution of the removal. However, it follows from the information submitted by the author, which has not been refuted by the State party, that the Court has discretion over such a request. Furthermore, the Committee notes that the State party has not provided any concrete evidence that such a request could have been granted in this case. In addition, the State party argues that the decision of the State Secretariat for Migration is duly reasoned and does not contain any formal defects. Thus, the Committee considers that there is no concrete indication that the lodging of an appeal against such a decision, taken on formal grounds, could have led to the suspension of the execution of the removal decision. Such a remedy, therefore, cannot be considered effective.[14] Furthermore, the Committee notes that, in the case before the Committee against Torture invoked by the State party, the author did not in any way justify his failure to refer the matter to the Federal Administrative Court, which is not the case here, where the author did justify his inability to lodge such an appeal within the five-day time limit on account of his lack of means to pay for a lawyer and the refusal to draft an application for legal aid by the free legal aid office to which he had applied. In the light of the foregoing, the Committee considers that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

10.3 As to the allegations of violations of the author's and his wife's rights on the basis of the consequences that their removal would have on their health, the Committee recalls that the Convention protects the rights of children and not those of adults and considers that this

[13] State Secretariat for Migration, "Le recours contre les décisions négatives en matière d'asile", p. 14.

[14] *N.B.F. v. Spain* (CRC/C/79/D/11/2017), para. 11.3; *A.D. v. Spain* (CRC/C/83/D/21/2017), para. 10.3.

part of the communication is incompatible with the provisions of the Convention.[15] It thus declares this part of the communication inadmissible under article 7 (c) of the Optional Protocol.

10.4 With respect to the reference to article 4 of the Convention, the Committee recalls that this article sets out general obligations that can be invoked only in conjunction with other rights of the Convention in the context of the individual communications procedure under the Optional Protocol.[16] The Committee considers that, in the communication under examination, the complaint under this article is insufficiently substantiated for the purposes of admissibility. Furthermore, the Committee notes that no specific complaints were made regarding H.R.'s schooling in Switzerland. Similarly, the author briefly mentions the fear of returning to Sri Lanka for political reasons but does not substantiate this point. The Committee considers that these facts are not sufficiently substantiated for the purposes of admissibility under article 7 (f) of the Optional Protocol and declares them inadmissible.

10.5 The Committee considers, however, that the communication appears to raise substantive issues under the Convention insofar as it relates to the decision to deport the family to Sri Lanka in the context of G.R.'s medical treatment. The Committee considers that this part of the communication is sufficiently substantiated for the purposes of admissibility, in the light of the complaints under article 3 of the Convention, and that the author's references to G.R.'s development, his right to medication and the principle of non-refoulement are to be understood in reference to articles 6 (2), 24 and 37 (a) of the Convention, respectively.

10.6 The Committee takes note of the State party's arguments that articles 3 and 4 of the Convention do not provide a basis for individual rights whose violation can be invoked before the Committee. The Committee recalls that the best interests of the child, as enshrined in article 3 of the Convention, is a threefold concept that is at the same time a substantive right, an interpretative principle and a rule of procedure. The Committee notes that, under article 5 (1) (a) of the Optional Protocol, individual communications may be submitted against a State party to the Convention by or on behalf of individuals or groups of individuals claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. Accordingly, the Committee considers that there is nothing in article 5 (1) (a) of the Optional Protocol to suggest a limited approach to the rights whose violation may be invoked in the individual communications procedure. The Committee also recalls that it has in the past ruled on alleged violations of article 3 of the Convention invoked under the individual communications mechanism.[17] Thus, the Committee declares the communication admissible insofar as it is sufficiently substantiated and proceeds to examine the merits.

Consideration of the merits

11.1 The Committee has considered the 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.

11.2 The Committee notes the author's argument that the decision to remove his family to Sri Lanka violates the principle of non-refoulement because G.R. will not be able to gain access to treatment for congenital hypothyroidism there, a situation that was allegedly not duly taken into account by the State Secretariat for Migration. It also notes that the State party submits that hypothyroidism is a common disease, that, according to the information available, treatment for hypothyroidism is available in Sri Lanka and that the author will be able to support his family through gainful employment and the possibility of financial or material assistance. Furthermore, the author does not demonstrate, according to the State party, that it would not be possible for G.R. to obtain treatment there.

11.3 The Committee recalls that States must not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such

[15] *U.A.I. v. Spain* (CRC/C/73/D/2/2015), para. 4.4; *Y and Z v. Finland* (CRC/C/81/D/6/2016), para. 9.3.

[16] *A.S. v. Denmark* (CRC/C/82/D/36/2017), para. 9.9.

[17] *M.T. v. Spain* (CRC/C/82/D/17/2017), para. 12.5; *C.R. v. Paraguay* (CRC/C/83/D/30/2017), para. 7.5; *J.A.B. v. Spain* (CRC/C/81/D/22/2017), para. 12.5; *E.A. and U.A. v. Switzerland* (CRC/C/85/D/56/2018), para. 6.7.

as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention. The assessment of the risk of such serious violations should be conducted in an age- and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.[18] The risk of such a serious violation should be assessed in accordance with the principle of precaution and, where reasonable doubts exist that the receiving State cannot protect the child against such risks, States parties should refrain from deporting the child.[19] The best interests of the child should be a primary consideration in decisions concerning the deportation of a child and such decisions should ensure – within a procedure with proper safeguards – that the child will be safe, will be provided with proper care and will enjoy his or her rights.

11.4 The Committee also recalls that it is for the national authorities to examine the facts and evidence and to interpret and enforce domestic law, unless their assessment has been clearly arbitrary or amounts to a denial of justice. It is therefore not for the Committee to assess the facts of the case and the evidence instead of the national authorities but to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that the best interests of the children were a primary consideration in that assessment.[20] In the present case, the Committee notes that, in its decision of 24 April 2019, the State Secretariat for Migration examined the particular circumstances in which the author and his family were to be removed to Colombo. In this respect, the State Secretariat for Migration noted that Colombo had sufficient medical facilities, including public hospitals and private clinics, to treat G.R. The Committee considers that, in view of the information in the file, it cannot conclude that this evaluation was manifestly arbitrary or equivalent to a denial of justice, or that G.R.'s best interests as a child were not a primary consideration in this evaluation.

11.5 Furthermore, the Committee notes that, when considering the risk that G.R. would face upon return to Sri Lanka, the State Secretariat for Migration relied on information indicating that the Sri Lankan authorities are aware of the fact that congenital hypothyroidism causes intellectual disabilities and that they have introduced a national screening programme and guidelines for the treatment of this disease. The State party also refers to information published by the Ministry of Health, Nutrition and Indigenous Medicine of Sri Lanka. This information not only provides guidance to the various health institutions in Sri Lanka on the screening for congenital hypothyroidism, but also indicates that treatment is simple, inexpensive, effective and available in the public and private health systems.

11.6 The Committee considers that the principle of non-refoulement does not confer a right to remain in a country solely on the basis of a difference in health services that may exist between the State of origin and the State of asylum, or to continue medical treatment in the State of asylum, unless such treatment is essential for the life and proper development of the child and would not be available and accessible in the State of return. In the present case, the Committee observes that, on the basis of the information on file, G.R.'s treatment, which is essential for his development, is available and accessible in Sri Lanka. Thus, the Committee concludes that G.R.'s removal to Sri Lanka would not result in obstacles to gaining access to the treatment he needs and would not constitute a violation by the State party of his rights under articles 3, 6 (2), 24 or 37 (a) of the Convention. However, the Committee recalls that in cases of children being returned to their countries of origin, effective reintegration measures should be taken, including immediate protection measures, in particular to ensure effective access to health.[21]

11.7 The Committee, acting under article 10 (5) of the Optional Protocol, is of the view that the facts before it do not disclose a violation of articles 3, 6 (2), 24 or 37 (a) of the Convention.

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[18] General comment No. 6 (2005), para. 27.

[19] *K.Y.M. v. Denmark* (CRC/C/77/D/3/2016), para. 11.8; *X.C., L.G. and W.G. v. Denmark* (CRC/C/85/D/31/2017), para. 8.3.

[20] *C.E. v. Belgium* (CRC/C/79/D/12/2017), para. 8.4; *E.A. and U.A. v. Switzerland*, para. 7.2.

[21] Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 32 (k).