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| *Case summary:[[1]](#footnote-1) Rubén Calleja Loma and Alejandro Calleja Lucas v Spain*[CRPD/C/23/D/41/2017](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/23/D/41/2017&Lang=en)Communication No. 41/2017Date of communication (initial submission): 2 May 2017Date of adoption of Views: 28 August 2020Invoked provisions of the Convention: [4](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [7](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#7),[13](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), [15](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [17](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#17) [23](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), and [24](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#24)Provisions of the Optional Protocol: [1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#1), [2](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#1)

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| Keywords: | Down syndrome; children with disabilities; right to inclusive education; respect for home and the family; freedom from torture or cruel.  |
| Decision: | The State has failed to fulfil its obligations under articles 7, 15, 17, 23 and 24, read alone and in conjunction with article 4 of the Convention. |

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Full decision: [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjzgCZsWoJdGkwMM%2fS2QwxizFC6RPNmzQUCEsP7U13f99FakmTFilw5495Mk1SsP79xQUof5yBj8cH7tPw3undoqvG3jT27TWpWqLIYFFXcnxxrztdKN%2fIHfzSyNbelzQw%3d%3d), [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjzgCZsWoJdGkwMM%2fS2QwxizFC6RPNmzQUCEsP7U13f99FakmTFilw5495Mk1SsP735l2kyL6OGmUi5IrKqPMqYZhxcgk00BgGe2ZDQuqwiOCGPqHgAxyqA64491kjz2ng%3d%3d), [French](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjzgCZsWoJdGkwMM%2fS2QwxizFC6RPNmzQUCEsP7U13f99FakmTFilw5495Mk1SsP7%2fZsvLn2P91GFTjTbViY%2fu1Tg7UrgvSt7F6mW0i0W38VvFBcaQsV5RgQp5Trt75p0g%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjzgCZsWoJdGkwMM%2fS2QwxizFC6RPNmzQUCEsP7U13f99FakmTFilw5495Mk1SsP72TuLYQ8MufjSIg0NdYOaxh3UtTKUBSfSFpRYNanCeD7SS%2fndoE%2b4UpQGFFB%2fA9hRA%3d%3d) and [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjzgCZsWoJdGkwMM%2fS2QwxizFC6RPNmzQUCEsP7U13f99FakmTFilw5495Mk1SsP7xq0l%2bp7ilw0cOtl04LtnMVYlaOrlJBI3VqLCSXJGH%2fSnZBQpQ7WPaPzCQGruFyNtw%3d%3d)

**The facts as submitted by the authors**

The author is Rubén Calleja Loma, a Spain national with Down syndrome born on 25 August 1999, represented by his father Alejandro Calleja Lucas. The authors claim that they are the victims of violations by the State of their rights under articles [7](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), [13](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), [15](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), [17](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), [23](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23) and [24](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), read in conjunction with article [4](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23), of the Convention.

Rubén, then aged 10, entered grade 4 of compulsory primary education at the mainstream public school where he had been studying with the support of a special education assistant. His integration at the school had been going well. From the outset of grade 4, a teacher X subjected Ruben to discrimination, neglect and abuse based on disability. In September 2010, Rubén entered grade 5 of compulsory primary education with teacher Z. From the beginning of term up until 28 October 2010, Rubén received no support from the special education assistant because teacher Z did not consider it necessary. Although the special education assistance was resumed after complaints of Rubén`s parents, the neglect and abuse by teaching staff continued. Despite the complaints submitted by Rubén’s parents to the Provincial Directorate of Education, the school’s management failed to take any measures to resolve the situation. In 2010 and 2011, schooling reports recommend placing Ruben in a special education centre based on “psychotic outbreaks” and a general developmental delay “associated with Down syndrome”. In author`s opinion, the report’s conclusion is invalid for not taking into account the discrimination and abuse against Rubén. On 6 May 2011, Rubén’s parents reported the abuse and discrimination against Rubén during the 2009/10 and 2010/11 school years to the León juvenile prosecution service.

On 20 June 2011, the Provincial Directorate of Education authorized Rubén’s enrolment in the special education centre. On 12 May 2014, the León provincial prosecution service submitted a report to Court of Investigation No. 3 of León regarding Rubén’s parents’ decision not to take him to the special education centre, where he was enrolled. The prosecution service claimed that their actions constituted the criminal offence of neglect. On 20 April 2015, Criminal Court No. 1 of León acquitted Rubén’s parents of the charges of neglect.

The authors argue that they have exhausted all effective domestic remedies to address the violations of Rubén’s rights. On 22 March 2013, the High Court of Justice of Castile and León rejected the parent`s requirements to fulfill Rubén’s right to be educated in a mainstream school.

**The complaint submitted to the Committee**

The author claims that the State violated its obligations under articles 4, 7, 13, 15, 17, 23 and 24, of the CRPD.

Regarding article 24,they argue that the administrative decision to enrol Ruben in the special education centre leads to a violation of his right to inclusive education. They claim that the courts of the State dismissed their request on the basis of the guidance team’s reports, which were prepared in close cooperation with and at the behest of the teachers who subjected Rubén to rejection, discrimination, neglect and abuse, with no respect for his rights or dignity. They also claim that their right as parents to be an active and respected party to the process was violated.

Regarding article 23,the authors argue that their right to family life was violated, since the decisions of the State ’s authorities implied Rubén’s internment and separation from his parents. Besides, the accusation of neglect made by the León provincial prosecution service against Rubén’s parents could have led to the loss by Rubén’s parents of their custodial authority.

Regarding article 7, they argue that the State has not taken the necessary measures to ensure his full enjoyment of all human rights on an equal basis with other children.

Regarding article 13,the authors claims that none of the rulings, decisions or decrees by the State authorities during the domestic proceedings referred to the Convention or the right to inclusive education. The authors referred to both in every document that they have submitted.

Regarding article 15, read in conjunction with article 17, the authors maintain that Rubén was subjected to rejection, discrimination, neglect and abuse that during the academic years 2009/10 and 2010/11 at the mainstream public school, and that the mistreatment at the hands of teaching staff endangered Ruben’s physical integrity. They claim that the León provisional prosecution service, twice informed of the events that had occurred, never offered to meet with Rubén’s parents, ignored the witness evidence and did not take any action to protect Rubén’s rights.

Regarding article 4,the authors claim the State has not yet adopted a legislative framework, an education policy or administrative measures that could ensure the full realization of Rubén’s right to inclusive education in line with the Convention, in force for the State since 3 May 2008.

**State ’s observations on admissibility**

On 26 December 2017, the State submitted its observations on the admissibility of the communication, requesting that the communication should be declared inadmissible.

Regarding article 24, the State recalls that, in their complaint, the authors requested that “Rubén [be allowed to] study a module of adapted basic vocational training for administrative assistants and that, on completion of this module, he [be able to] certify the studies he has completed”. In this regard, the State provides a report from the León regional government office attesting to the fact that, in the 2017/18 school year, Rubén was admitted to grade 1 of basic vocational training in administrative services at the publicly subsidized private educational centre “Down León Amidown Amigos del Síndrome de Down”. The State concludes that since the remedy has been provided, the authors no longer have an interest in proceeding with the communication, being no longer appropriate to “make claims regarding the admissibility and merits.”

**The author’s comments on the State ’s observations**

On 1 February 2018, the authors submitted their comments on the State ’s observations.

Regarding article 24, they confirm that Rubén is enrolled in the 2017/18 school year at the publicly subsidized private educational centre. However, this does not mean that compliance with article 24 of the Convention has been achieved. They assert that the centre where Rubén studies is “fundamentally a special centre” for persons with Down syndrome. Rubén’s right to inclusive education have not been realized. They disagree with the assertion that they no longer have an interest in pursuing the request submitted to the Committee. They reiterate that their intention is to ensure the recognition of Rubén’s right to undertake vocational training within the mainstream education system, with the necessary adaptations and an official certification.

Regarding articles 4, 7, 13, 15, 17 and 23, the authors note that the State has not commented on the allegations associated with these articles.

**Additional submissions by the parties**

On the part of the State: In its observations of 30 May 2018, the State argues that the authors have deviated from their initial request by citing violations of articles 4, 7, 13, 15, 17 and 23 of the Convention. In response to the alleged violation of article 24 of the Convention, it reaffirms that the authors’ request for reparation has been satisfied. Citing Order No. EDU/465/2017 of 13 June 2017, the State argues that the centre has signed an agreement to provide basic vocational training, not special education, and that both the module that Rubén is studying and the centre that teaches it are part of the State ’s mainstream education system.

On the part of the authors: On 19 September 2018, the authors submitted additional comments, stating that the administrative services module taught at the private centre is not designed to be inclusive: it is a vocational training programme for students with special educational support needs. Order No. EDU/465/2017 of 13 June 2017, issued after the Committee’s visit to the State, continues to prop up a segregated special education system contrary to the Convention.

The authors reiterate their allegations with regard to the violation of articles 4, 7, 13, 15, 17 and 23 of the CRPD. They have not received adequate protection from the administration or effective protection of their rights under the CRPD and the State ’s Constitution.

**Committee’s consideration of admissibility**

The Committee notes the authors’ claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State on this, the Committee considers that the requirements of article 2 (d) of the Optional Protocol have been met.

The Committee further notes the State ’s argument that the communication should be declared inadmissible because the authors’ request for reparation has been met, insofar as Rubén was admitted in the 2017/18 school year to grade 1 of a vocational training in the delivery of administrative services at the publicly subsidized private educational centre. The Committee also notes that the authors do not consider their request met, as the centre is not a mainstream educational establishment and the training that Rubén is undertaking is not inclusive in approach but is tailored exclusively to students with special educational support needs.

The Committee notes the authors’ allegations that the State violated their rights under the Convention: (a) the administrative decision to enrol Rubén in the special education centre – upheld by the State ’s courts – violated his right to inclusive education; (b) the accusation of neglect made by the León provincial prosecution service against Rubén’s parents on the ground that they had refused to take him to a special education centre violated Rubén’s right to family life; (c) the alleged acts of discrimination and abuse suffered by Rubén have not been properly investigated by the State ’s authorities; (d) the State has not taken steps to ensure that Rubén enjoys all his rights on an equal basis with other children; (e) the State has not adopted a legislative framework or an effective policy that ensures the full realization of Rubén’s human rights, despite the fact that the Convention entered into force for the State on 3 May 2008.

In view of the above and given that the State has not commented on its regard, the Committee considers that the authors have sufficiently substantiated their claims for admissibility purposes.

Regarding article 13, the Committee considers that these allegations have not been sufficiently substantiated for the purposes of admissibility, since the authors do not provide any information on a lack of training programmes for persons working in the administration of justice in the State. It therefore declares them inadmissible in accordance with article 7(f) of the Optional Protocol.

Consequently, and in the absence of any other obstacles with regard to admissibility, the Committee finds the communication admissible under article 2 of the Optional Protocol as regards the authors’ claims of the violation of articles 24, 23, 7, 15 and 17 of the Convention, read alone and in conjunction with article 4, and proceeds to its consideration of the merits.

**Committee’s consideration of the merits**

The Committee has considered the communication in the light of all the information received.

Regarding article 24, the Committee notes that, according to the authors, the administrative decision to enrol Rubén in the special education centre –upheld by the State ’s courts– violated his right to an inclusive education. The Committee further notes that it does not appear that the State ’s authorities have carried out a reasonable assessment of Rubén’s educational needs and the reasonable accommodations he needed to continue attending a mainstream school.

The Committee also notes that Rubén did not have a special education assistant at the beginning of the 2010/11 school year, since the teacher had decided that an assistant was not needed; the assistant was only assigned later, at the request of Rubén’s parents. Besides, the decisions issued by the judicial authorities of the State do not give any weight to the report drawn up by the clinical psychologist G.C. indicating that Rubén’s difficulties in adjusting to schooling in the mainstream establishment were due to a lack of educational support and the discriminatory, hostile environment that he experienced there. Regarding the authors claim on article 24 read in conjunction with article 4 of the Convention (lack of adoption of legislation or policies to ensure the right to inclusive education) the Committee recalls that: “For article 4 (1) (b) of the Convention to be implemented, States parties should take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities and that are in violation of article 24.”[[2]](#footnote-2)

To conclude on article 24, the administrative decision to place Ruben in a special education institution, together with the points outlined above, constitutes a violation of his rights under article 24 of the Convention read alone and in conjunction with article 4.

Regarding article 23, the Committee notes the authors’ claim that the State violated their right to family life by accusing the parents of neglect on the ground that they had refused to take their child to the special education centre, and that the Court ordered Rubén’s parents to provide a surety of €2,400 each as a precautionary measure, lifted almost a year later, when the parents were acquitted. This excessive financial burden on Rubén’s parents compounded the tensions arising from their struggle for their child’s rights, impact negatively on their personal and family well-being. The Committee recalls that the State has to “ensure that the parents of students with disabilities cannot be prosecuted for neglect if they demand that their children’s right to inclusive education on an equal footing be respected”.[[3]](#footnote-3) In conclusion, the State failed to discharge its obligations under article 23 of the Convention read alone and in conjunction with article 4.

Regarding articles 15 and 17, the Committee notes the authors’ allegations that during the 2009/10 and 2010/11 school years, Rubén was subjected to discrimination and abuse in the mainstream public school, which endangered his physical integrity and undermined his dignity. The Committee recalls that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 15) and the State must take preventive measures, and that every person with disabilities has the right to respect for his or her physical and mental integrity on an equal basis with others (Article 17). Faced with the evidence, including testimonies at courts of law, about abuse against Ruben, the State had an obligation to carry out an effective and thorough investigation, but it failed to do so. Consequently, and in the absence of any comments from the State, the Committee considers that the State has violated Rubén’s rights under articles 15 and 17 of the Convention read alone and in conjunction with article 4.

Having found violations of the authors’ rights under the aforementioned articles of the Convention, the Committee does not consider it necessary to examine the same allegations under article 7 of the Convention.

**Conclusion and recommendations**

The Committee is of the view that the State has failed to fulfil its obligations under articles 7, 15, 17, 23 and 24 of the Convention, read alone and in conjunction with article 4. The Committee therefore makes the following recommendations to the State:

**(a) Concerning the authors, the State is under an obligation to:**

(i) Provide them with an effective remedy, including reimbursement of any legal costs together with compensation, taking into account the emotional and psychological harm they have suffered due to the treatment received and the way their case was handled by the authorities;

(ii) Ensure that Rubén is admitted to a truly inclusive vocational training programme, in consultation with him and with his parents.

(iii) Conduct an effective investigation into the allegations of abuse and discrimination reported by the authors and ensure accountability at all levels.

(iv) Publicly recognize the violation of the rights of Rubén to inclusive education and to a life free from violence and discrimination, as well as the violation of the rights of his parents, who were wrongly charged with the offence of neglect, with psychological and financial consequences.

(v) Publish the present Views and circulate them widely in accessible formats.

**(b) In general, the State** must prevent similar violations. In particular, the State, in close consultation with persons with disabilities and the organizations that represent them, must:

(i) Expedite legislative reform to fully eliminate the medical model of disability and clearly define full inclusion of all children with disabilities and its specific objectives at each level of education;

(ii) Ensure that inclusive education is considered a right and grant students with disabilities the right to inclusive learning opportunities in mainstream education, with support as required;

(iii) Formulate a comprehensive, inclusive education policy with strategies for promoting a culture of inclusion in mainstream education.

(iv) Eliminate any educational segregation of students with disabilities in both special education schools and specialized units within mainstream schools.

(v) Ensure that the parents of students with disabilities cannot be prosecuted for neglect if they demand their children’s right to inclusive education on an equal basis with others be respected.

1. This case summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, consult IDA’s factsheet available on [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/en/disability-rights-litigationhttp%3A/www.internationaldisabilityalliance.org/en/disability-rights-litigation)  [↑](#footnote-ref-1)
2. General comment No. 4, para. 19. [↑](#footnote-ref-2)
3. CRPD/C/ESP/IR/1, para. 84 (e). [↑](#footnote-ref-3)