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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, in respect of communication No. 89/2019**, ***, ****

Communication submitted by:	D.E.P. (represented by the Court of Cassation legal aid office of the Province of Buenos Aires)
Alleged victim:	The author
State party:	Argentina
Date of communication:	1 March 2019 (initial submission)
Date of adoption of decision:	19 September 2023
Subject matter:	Criminal conviction of the author without taking into account the fact that he was a child when determining the length of the sentence, without prioritizing his social rehabilitation and without ensuring that he received differentiated treatment while serving his sentence
Procedural issues:	Exhaustion of domestic remedies; admissibility, communication manifestly ill-founded
Substantive issues:	Best interests of the child; conditions of detention; deprivation of liberty
Articles of the Convention:	3, 4, 25, 37 (b)–(c) and 40
Articles of the Optional Protocol:	7 (c), (e) and (g) and 20

1.1 The author of the communication is D.E.P., a national of Argentina born on 17 November 1990. The author claims that the State party has violated his rights under articles 3, 4, 25, 37 (b) and (c) and 40 of the Convention. The author is represented by counsel. The Optional Protocol entered into force for the State party on 14 July 2015.

* Reissued for technical reasons on 23 January 2024.

** Adopted by the Committee at its ninety-fourth session (4–22 September 2023).

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

**** Pursuant to rule 8, paragraph 1 (a), of the Committee's Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child relating to a communications procedure, Mary Beloff did not participate in the consideration of the communication.

1.2 At the request of the parties, consideration of the communication was suspended between 10 March 2020 and 30 September 2022 owing to the institution of a domestic amicable settlement procedure between the parties, which concluded without an agreement being reached.

Facts as submitted by the author

2.1 On 23 April 2010, the Criminal Chamber of Appeal and *Amparo* of La Matanza sentenced D.E.P. to 15 years' imprisonment for the offence of murder occurring during the commission of another offence (*criminis causae*).[1] The offence was committed on 26 January 2008, when the author was aged 17 years and 2 months. In determining the sentence, the Chamber considered that there were aggravating circumstances, namely the victim's defencelessness and the author's "manifest disregard for the lives of others", and a mitigating factor, namely the improvement in the author's character between the time he was placed in detention and the time of his sentencing.[2] The Chamber ordered the author's transfer to an adult prison unit. The author lodged a cassation appeal against his conviction, claiming, inter alia, arbitrariness in the application of a custodial sentence and in determining the length of his sentence, in violation of articles 37 and 40 of the Convention. In particular, the author emphasized that, despite the express recognition of the improvements he had made during his time in the youth reform centre, during sentencing the gravity of the offence had been given greater weight in determining the need for punishment, without any consideration for the purpose that punishment should serve in the context of juvenile criminal responsibility under articles 37 and 40 of the Convention.

2.2 On 13 April 2011, the Third Chamber of the Court of Cassation rejected the author's appeal in respect of his claims regarding the arbitrary justification of the sentence, but partially upheld his complaint regarding the arbitrary manner in which the sentence had been determined. The Court considered that the aggravating circumstance of manifest disregard for the life of others did not apply because it was already encompassed by the offence of *criminis causae*. It also decided to apply another mitigating circumstance owing to the improvement in the author's character, as demonstrated during the hearing. The Court consequently reduced the author's sentence to 13 years and 6 months' imprisonment. The author filed an appeal against the decision of the Court of Cassation before the Supreme Court of the Province of Buenos Aires, citing the inapplicability of the law invoked. He claimed, inter alia, that the decision was arbitrary for the same reasons cited in his appeal against the judgment of the lower court.

2.3 On 4 April 2012, the Supreme Court of the Province of Buenos Aires rejected the appeal. The Supreme Court of the Province of Buenos Aires considered that, when deciding whether to impose a custodial sentence, the judges had weighed the nature of the act, the author's previous conduct, the outcome of his time in the youth reform centre and the direct impression he had made on the judge, as provided for under article 4 of Act No. 22.278.[3] The Supreme Court of the Province of Buenos Aires added that the author's objection to the

[1] Article 80 (7) of the Argentine Criminal Code.

[2] Articles 40–41 of the Criminal Code.

[3] "The imposition of a penalty on the minor referred to in article 2 shall be subject to the following requirements:

(1) The minor has previously been found to have criminal liability, and civil liability if applicable, in accordance with the procedural rules;

(2) The minor has reached 18 years of age;

(3) The minor has been placed in a youth reform centre for a period of at least one year, which may be extended as necessary until the age of majority is reached.

Once these requirements have been met, the judge shall order a punishment if he or she determines that it is necessitated by the nature of the act, the minor's previous conduct, the outcome of the time he or she has spent in the youth reform centre and the direct impression made by the minor on the judge. In the case of an attempted offence, the punishment may be reduced in accordance with the applicable rules.

On the contrary, if punishment is not deemed necessary, the judge shall release the minor, in which case the requirement set out in subparagraph (2) shall not apply."

decision of the Court of Cassation related to the impact that the removal of an aggravating circumstance and the introduction of another mitigating factor should have had in determining the sentence, which was beyond the Court's competence in the scope of the special appeal. The author filed a special federal appeal against the decision of the Supreme Court of the Province of Buenos Aires on the grounds that it violated articles 37 and 40 of the Convention. The Supreme Court of the Province of Buenos Aires rejected the appeal on 31 July 2013. In view of this, the author filed a complaint before the Supreme Court of Argentina, citing the rejection of his special federal appeal.

2.4 On 6 March 2018, the Supreme Court of Argentina declared the author's complaint and special appeal partially admissible and upheld the judgment of the Supreme Court of the Province of Buenos Aires, referring to its decision in a previous case.[4] In that case, the Supreme Court of Argentina found against the claim that, in determining the punishment to be imposed, "the applicable standards had not been duly observed in respect of the particular characteristics of the act and the specific situation of the accused minor".[5] It also found that:

> since the law has not established the requirements for the judge to decide on "the possibility of release" in the event that it is determined that the deprivation of liberty is no longer necessary, the Court must conclude that the judicial oversight of the relevant judge in respect of the custodial sentence imposed on C.J.A. cannot have this scope.[6]

However, the Supreme Court emphasized that:

> [t]he principle that deprivation of liberty should be used for the shortest appropriate period of time, as set out in article 37 (b) of the Convention on the Rights of the Child, is closely linked to the duty to periodically review measures of deprivation of liberty imposed on juvenile offenders, which arises from article 25 of the Convention. The duty of review therefore constitutes the mechanism for effectively ensuring that, while the sentence is being served, the guiding principle set out in article 37 (b) is applied, namely that any restrictions on the personal liberty of the minor shall be kept to the strictest minimum necessary to promote his or her social reintegration and ensure that he or she can play a constructive role in society.[7]

The Supreme Court also referred to the case concerning *Mendoza et al. v. Argentina*, judgment of 14 May 2013 of the Inter-American Court of Human Rights, in which the latter Court found that the State party's juvenile criminal legislation did not conform to international standards and ordered the adoption of such legislative or other measures as might be necessary to ensure the protection of children under those standards.[8] In view of this, the Supreme Court ordered the legislative branch, within a reasonable period of time, to bring the juvenile criminal legislation into line with the minimum international standards.[9]

2.5 The Supreme Court's decision rendered the author's conviction final. On 19 April 2019, the Criminal Chamber of Appeal and *Amparo* of La Matanza upheld the calculation of the sentence at 13 years and 6 months' imprisonment and deemed that it would expire on 25 July 2021.

Events occurring after the registration of the communication

2.6 On 3 September 2021, the author informed the Committee that he had been released on 29 December 2020.

[4] Supreme Court of Argentina, *A., C.J.*, murder in conjunction with theft, unlawful possession of firearms intended for civilian use, *Decisions*: 340:1450, judgment of 31 October 2017.

[5] Ibid., consideration No. 4.

[6] Ibid., consideration No. 7.

[7] Ibid., consideration No. 5.

[8] Ibid., consideration No. 6.

[9] Ibid., consideration No. 9.

Complaint

3.1 The author claims that the State party has violated article 3 of the Convention insofar as the judicial decisions against him were contrary to his best interests. Firstly, the sentence was based on the gravity of the offence and not on a true assessment of the need for punishment. In addition, while serving his sentence, he was treated as an adult. The Criminal Chamber of Appeal and *Amparo* stated that, despite the improvement in the author's character, the imposition of the sentence was necessary given the gravity and seriousness of the offence for which he had been found responsible and the manner in which it had been committed.[10] This rationale was applied by all of the courts. The author argues that the best interests of the child require that, when dealing with child offenders, the traditional objectives of criminal justice, such as repression or retribution, must be replaced by a special form of justice focused on repairing harm and providing rehabilitation and restorative justice.[11]

3.2 The author also claims that the State party violated article 40 of the Convention, which establishes that the aim of punishment is rehabilitation. He notes that article 40 sets out the importance of promoting the child's reintegration and ensuring that he or she can assume a constructive role in society. However, in his case, the "gravity of the act" was equated with the "need for punishment". He emphasizes that, as established by the Committee, a "strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of the Convention".[12] On that basis, the need for punishment must be assessed exclusively in accordance with the expected progress of the minor. The gravity of the act and culpability should be used only to establish the length of the sentence; they should not be used as the basis for it. Therefore, imposing a sentence of 13 years and 6 months' imprisonment on a child without any periodic review thereof clearly implies the imposition of a punishment based solely on the gravity of the act, which is not a valid parameter for determining the need for punishment in juvenile justice proceedings.[13]

3.3 The author also claims that the State party violated article 37 (b) of the Convention, which establishes that detention is to be used only as a measure of last resort. He argues that this means that a State must impose a custodial sentence "for the shortest appropriate period of time". In his case, the author was sentenced to a term of imprisonment in the absence of any consideration of whether it was necessary given the improvements he had made and which was calculated without any justification as to the extent to which it constituted a measure of last resort or whether it constituted the shortest appropriate period of time. The author emphasizes that, according to the Inter-American Court of Human Rights, "if circumstances have changed and it is no longer necessary for children to be detained, it is the duty of States to release them, even if they have not served the sentence handed down in each specific case. To this end, States must make legislative provision for early release programmes".[14] Consequently, he alleges that, by leaving in place a lengthy sentence without regularly assessing its necessity, the State party violated his right to be detained "for the shortest appropriate period of time", as required by article 37 (b) of the Convention.

3.4 The author claims that the State party also violated article 37 (c) of the Convention, which requires children deprived of their liberty to be held separately from adults. He reiterates that after he was convicted by the lower court, he was ordered to be detained in an adult prison unit. Since then, he has served his sentence under a regime designed for a different purpose than the one that should be applied to juveniles. According to the Committee, this rule "does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he or she turns 18. Continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not

[10] Judgment of the Criminal Chamber of Appeal and *Amparo* of La Matanza, dated 8 April 2010, provided by the author, pp. 76–77.

[11] General comment No. 14 (2013), para. 28.

[12] General comment No. 10 (2007), para. 71. The author cites general comment No. 10 (2007) throughout his individual communication, which was submitted before the adoption of general comment No. 24 (2019).

[13] Rules 13.1 and 19.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

[14] *Mendoza et al. v. Argentina*, para. 162.

contrary to the best interests of the younger children in the facility."[15] The author points out that there is no rule in the State party's legislation that expressly regulates the serving of sentences imposed on juveniles once they reach the age of majority and that the rules in place for adults are applied to such persons.[16]

3.5 The author alleges that the State party also violated its duty to periodically review and assess the necessity of the measure or sentence of deprivation of liberty against him, as required by article 25 of the Convention. He maintains that, under the terms of article 25, the assessment of the need for a sentence must not be conducted only at the time that it is handed down and its length is set, but that such an assessment must take place periodically while the sentence is being served. If circumstances have changed and imprisonment is no longer necessary, it is the duty of States to release people even if they have not served the full length of the sentence handed down in each specific case.[17] In the present case, during the more than nine years that the author has been deprived of his liberty, his development has not been assessed in order to determine whether the sentence remains necessary and to ensure that he remains in detention for the shortest appropriate period of time.

3.6 Lastly, the author alleges that the State party has failed in its duty to adopt legislation to give effect to the above-mentioned rights, in violation of article 4 of the Convention. He reiterates that, in his case, the Supreme Court of Argentina recognized that the judge in the case was prevented from conducting a judicial assessment of the need for the sentence and determining if there was any possibility of release because the law in force does not make provision for such a possibility. He recalls that, although he spent the first two years of his detention (between 26 January 2008 and 23 April 2010) in the Nuevo Dique juvenile detention centre, he has since been detained for almost nine years in an adult prison unit and treated as an adult. This is because Act No. 22.278, which was enacted in 1980, 10 years before the ratification of the Convention, continues to regulate juvenile criminal justice. This means that, almost 28 years after ratification, the State party has not adopted new juvenile criminal legislation that meets the minimum standards required by the Convention. The author emphasizes that the current rules are based on a youth reform model for dealing with children, under which the judge is authorized to provisionally decide what happens to a child when he or she is charged, irrespective of the extent of the child's involvement with a criminal act and/or the outcome of the criminal case.[18] The author points out that in 2008, the Supreme Court of Argentina itself ordered the legislative branch, within a reasonable period of time, to bring the juvenile criminal legislation into line with the minimum standards set out in the international human rights instruments that have been incorporated into the Constitution.[19] Similarly, in 2013, the Inter-American Court of Human Rights, in *Mendoza et al. v. Argentina*, found that the State party had violated its duty to adopt domestic law provisions in that regard, in violation of article 2 of the American Convention on Human Rights, and ordered the State party to update its regulations on juvenile criminal justice.[20] The Committee itself has recommended that the State party "[a]brogate Act No. 22.278 (…) and adopt a new law consistent with the Convention and international standards on juvenile justice".[21] The author argues that the lack of a juvenile justice system alters the aim of a penalty imposed on a juvenile and ultimately makes it difficult to review it periodically under the terms of article 25 of the Convention.

[15] General comment No. 10 (2007), para. 86.
[16] Act No. 13.634, art. 85.
[17] General comment No. 10 (2007), paras. 77 and 84; and rule 28.1 of the Beijing Rules.
[18] Act No. 22.278, arts. 1–2.
[19] *García Méndez, Emilio and Musa, Laura Cristina*, Case No. 7537, *Decisions* 331:2691, judgment of 2 December 2008, consideration No. 7.
[20] Paras. 295–297.
[21] CRC/C/ARG/CO/3-4, para. 80 (a).

3.7 The author requests the Committee to: (a) find the State party responsible for the alleged violations; (b) urge the authorities of the State party to take the necessary steps to assess whether there is a need for him to continue to serve the sentence imposed on him, and possibly to make reparations for the harm caused to him; urge the State party to bring its juvenile criminal justice system into line with the Convention, ensuring in particular that when children are sentenced to deprivation of liberty, express provision is made for a periodic review of their sentence, including the possibility of releasing them, as required under article 25 of the Convention; and (d) make recommendations to the State party to ensure that courts conduct periodic reviews to assess whether measures of deprivation of liberty imposed on children need to be maintained.

State party's observations on admissibility and the merits

4. On 30 March 2023, the State party indicated that it considered it appropriate to await the Committee's analysis of the legal merits of the case and its final decision in the present international proceedings.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 The Committee notes that the author alleges violations of articles 3, 4, 25, 37 (b) and (c) and 40 of the Convention in respect of his rights with regard to the imposition and serving of his sentence (see paras. 3.1–3.6). In that connection, the Committee notes that the author raised these allegations during the various appeal stages, including before the State party's Supreme Court, whose decision rendered his sentence final. Accordingly, and since the State party has not raised any objections in this regard, the Committee considers that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.[22]

5.3 The Committee notes that the author committed the offence for which he was convicted on 26 January 2008 and that the decision of the Criminal Chamber of Appeal and *Amparo* of La Matanza, sentencing him to 15 years' imprisonment, is dated 23 April 2010. The Committee notes that both the facts constituting the offence and the imposition of the sentence took place before the Optional Protocol entered into force for the State party on 14 July 2015. However, the author's imprisonment continued until 29 December 2020, more than five years after the Optional Protocol entered into force for the State party, and the Supreme Court decision that rendered the author's sentence final was issued on 6 March 2018, almost three years after the Optional Protocol entered into force for the State party. The Committee thus finds that articles 7 (g) and 20 of the Optional Protocol do not constitute a barrier to the admissibility *ratione temporis* of the present communication.[23]

5.4 The Committee notes that the author was convicted when he was over 18 years of age and that he was consequently an adult when he submitted his individual communication to the Committee. However, the Committee notes that the author's sentence was imposed for acts he committed on 26 January 2008, when he was under 18 years of age. The Committee also notes that the author claims that the State party has violated his rights under the Convention with regard to the juvenile criminal justice system and argues that these rights should have been applied to him. Consequently, the Committee considers that there are no obstacles to the admissibility *ratione personae* of the communication.

5.5 The Committee notes the author's argument that the State party violated article 25 of the Convention by failing to regularly review his deprivation of liberty and consider whether

[22] *S.H.K. v. Denmark* (CRC/C/93/D/140/2021), para. 6.2; and *J.M. v. Chile* (CRC/C/90/D/121/2020), para. 7.2.

[23] *Navarro Presentación and Medina Pascual v. Spain* (CRC/C/81/D/19/2017), para. 6.2; and *a contrario sensu*, *A.H.A. v. Spain* (CRC/C/69/D/1/2014), para. 4.2.

it continued to be necessary (see para. 3.5). The Committee notes that article 25 of the Convention does not refer to deprivations of liberty in the criminal context, but seeks to extend the guarantees of juvenile justice recognized in articles 37 and 40 of the Convention to those cases in which a child "has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health". Accordingly, the Committee declares the author's claims under article 25 of the Convention inadmissible *ratione materiae* pursuant to article 7 (c) of the Optional Protocol. However, the Committee notes that the author also makes claims regarding the lack of periodic review pursuant to articles 3, 4, 37 (b) and 40 of the Convention. Consequently, the Committee considers that article 7 (c) of the Optional Protocol is not an obstacle to the admissibility of these claims under articles 3, 4, 37 (b) and 40 of the Convention.

5.6 The Committee notes the author's argument that after he was convicted by the lower court, he was ordered to be detained in an adult prison unit, in violation of articles 3 and 37 (c) of the Convention; and that the absence of different treatment from that applied to adults while serving his sentence violates article 4 of the Convention (see paras. 3.1, 3.4 and 3.6). The Committee recalls that, although States parties must establish separate facilities for children deprived of their liberty, this "does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility."[24] However, the Committee notes that the author was approximately 19 and a half years old when he was convicted and transferred to an adult prison. The Committee therefore considers that the author has failed to sufficiently substantiate his claims for the purposes of admissibility of the communication and declares them inadmissible under article 7 (f) of the Optional Protocol.

5.7 The Committee considers that, for purposes of admissibility, the author has sufficiently substantiated his claims that his sentence and the lack of periodic review thereof, as well as the absence of appropriate regulations, constitute violations of articles 3, 4, 37 (b) and 40 of the Convention. Given that there are no other obstacles to admissibility, the Committee declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

6.2 The Committee recalls that the differences in physical and psychological development between children and adults "constitute the basis for the recognition of lesser culpability [of children], and for a separate system with a differentiated, individualized approach".[25] In the same vein, and in accordance with article 37 (b) of the Convention, laws relating to juvenile justice "should contain a wide variety of non-custodial measures and should expressly prioritize the use of such measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time".[26] The Committee also recalls that:

> the reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. Weight should be given to the child's best

[24] Committee's general comment No. 24 (2019), paras. 92–93.
[25] Ibid., para. 2.
[26] Ibid., para. 73.

interests as a primary consideration as well as to the need to promote the child's reintegration into society.[27]

6.3 This means that the State party has the burden of proving two different elements with regard to deprivation of liberty in the juvenile criminal justice setting. Firstly, in order to demonstrate that a sentence of imprisonment is being used as a last resort, the State party must establish that other non-custodial measures have been considered and that the sentence is necessary under the terms of articles 37 (b) and 40 (1) of the Convention. Secondly, in order to demonstrate that the deprivation of liberty is being imposed for the shortest possible period of time, the State party must establish that the duration of the sentence does not extend beyond what is necessary to fulfil the aims on which the need for the sentence was based.

6.4 The Committee notes that the right to a regular review of sentences is derived from the principles set forth in the two preceding paragraphs. In this regard, the Committee has stated that "in application of the principle that deprivation of liberty should be imposed for the shortest appropriate period of time, States parties should provide regular opportunities to permit early release from custody, including police custody, into the care of parents or other appropriate adults."[28] This applies even in cases of very serious offences.[29] Similarly, the Committee recalls that "the period to be served before consideration of parole should be substantially shorter than that for adults and should be realistic, and the possibility of parole should be regularly reconsidered".[30]

6.5 The Committee notes the author's argument that he was sentenced on the basis of the seriousness of the offence and not on the basis of a genuine assessment of the necessity of the punishment, which should be based exclusively on the child's expected progress, in violation of articles 3 and 40 of the Convention (see paras. 3.1–3.2). The Committee also notes the author's argument that the decision failed to consider the necessity of the sentence in relation to his progress and that it did not demonstrate why the sentence constituted the last resort and had been imposed for the shortest appropriate period of time, in violation of article 37 (b) of the Convention.

6.6 In the present case, the Committee notes that the Criminal Chamber of Appeal and *Amparo* stated that the imposition of the sentence was necessary given the gravity and seriousness of the act for which he had been found responsible and the assessment of the manner in which the offence had been committed.[31] The Committee considers that, while the gravity of the act may require the imposition of a custodial sentence and form part of the proportionality test for the sentence imposed (see para. 6.2), it cannot in itself constitute justification for the necessity of the sentence under the terms of articles 37 and 40 of the Convention, nor does it relieve the authorities of their obligation to provide such justification, even in cases of very serious offences.[32] The Committee notes that it does not appear, from a reading of the judgment of the Criminal Chamber of Appeal and *Amparo*, that the Chamber conducted an examination of the need for the author to be deprived of his liberty. The Committee notes that the Third Chamber of the Court of Cassation reduced the author's sentence by dismissing one of the aggravating factors in the lower court's judgment and adding another mitigating factor due to the improvement in his character. However, neither does it appear from the reading of this judgment that the Court of Cassation has considered the fact that the lower court's judgment lacks an analysis of the need for punishment beyond mentioning the seriousness of the act and the manner in which it was committed. Although the Court of Cassation added a mitigating factor, namely the improvement in the author's character, that reduced his sentence, this cannot be considered to constitute a review of the need to impose a custodial sentence. The Committee notes that neither does it appear from the above-mentioned judgments that there was an express assessment of the application of

[27] Ibid., para. 76.

[28] Ibid., paras. 88 and 6 (c) (v). See also rule 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

[29] CRC/C/JOR/CO/4-5, para. 64 (c).

[30] General comment No. 24 (2019), para. 81.

[31] Judgment of the Criminal Chamber of Appeal and *Amparo* of La Matanza, dated 8 April 2010, provided by the author, pp. 76–77.

[32] CRC/C/MAR/CO/3-4, para. 75 (a).

alternative non-custodial measures that justifies imposing the sentence as a last resort and for the shortest possible period of time. Despite this, and recognizing that the applicable domestic rules do not conform to the international standards set out by, inter alia, the Convention, the decision of the Supreme Court of Argentina upheld the author's sentence. Therefore, and in the absence of any observations by the State party, the Committee concludes that the State party has violated the author's rights under articles 37 (b) and 40 (1) of the Convention.

6.7 Having found a violation of articles 37 (b) and 40 (1) of the Convention, the Committee considers that it does not need to rule on the existence of a violation of article 3 in connection with the same facts.

6.8 The Committee notes the author's argument that the State party has failed in its duty to adopt provisions in domestic law to give effect to his rights, contrary to the requirements of article 4 of the Convention (see para. 3.6). The Committee takes note that various judicial bodies have stated that the juvenile justice system applicable in the State party pursuant to Act No. 22.278 is not aligned with the provisions of the Convention, in particular at the domestic level, namely the Supreme Court of the State party in 2008,[33] at the universal level, namely the Committee in 2010,[34] and at the regional level, namely the Inter-American Court of Human Rights in 2011.[35] The Committee notes that the State party's juvenile justice system has not been modified despite the above-mentioned recommendations. In particular, the Committee notes that, in 2019, the Supreme Court again recognized, in connection with the author's case, the failure to align the juvenile justice regime with the standards set out in the Convention and the fact that, in their judgments, the judges involved in the case could not remedy the regulatory contradiction between that regime and the standards in the Convention (see para. 3.6). Consequently, and in the absence of any observations from the State party justifying the alleged legislative inaction or demonstrating the adoption of other administrative or other measures to give effect to these rights, the Committee considers that the State party has violated article 4, read in conjunction with articles 37 (b) and 40 (1), of the Convention.

7. The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, finds that the facts of which it has been apprised amount to a violation of articles 37 (b) and 40 (1) and of article 4, read in conjunction with articles 37 (b) and 40 (1), of the Convention.

8. Consequently, the State party is obliged to provide the author with effective reparation for the violations suffered. The State party is also under an obligation to prevent similar violations in the future. In that regard, the Committee recommends that the State party:

(a) Abrogate Act No. 22.278 on juvenile justice and adopt a new law consistent with the Convention and international standards on juvenile justice, in the terms set forth in the present Views and in general comment No. 24 (2019);

(b) Ensure a juvenile justice regime that extends protection to children who were under the age of 18 years at the time of the commission of the offence but who reach that age during the trial or sentencing, and guarantee a periodic review of the sentence while it is being served to assess its necessity under the terms of articles 37 (b) and 40 (1) of the Convention;

(c) Take all necessary measures, including strengthening the policy on non-custodial measures and reintegration measures for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible, in accordance with article 37 (b) of the Convention;

9. In accordance with article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the present Views. The State party is also requested to

[33] Supreme Court of Argentina, *A., C.J.*, murder in conjunction with theft, unlawful possession of firearms intended for civilian use, *Decisions*: 340:1450, judgment of 31 October 2017, considerations No. 6 and No. 9.

[34] CRC/C/ARG/CO/3-4, para. 80 (a).

[35] Case of *Mendoza et al. v. Argentina*, para. 325.

include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views and to have them widely disseminated.