



Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 123/2020*, **

<i>Communication submitted by:</i>	C.S.D. (represented by Claudia Cesaroni)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Argentina
<i>Date of communication:</i>	4 August 2020 (initial submission)
<i>Date of adoption of decision:</i>	17 January 2024
<i>Subject matter:</i>	Denial of temporary release or parole to a person sentenced to 21 years of imprisonment for a crime committed as a minor
<i>Procedural issue:</i>	Same matter examined under another procedure of international investigation or settlement
<i>Substantive issue:</i>	Deprivation of liberty
<i>Article of the Convention:</i>	37 (a)
<i>Article of the Optional Protocol:</i>	7 (d)

1.1 The author of the communication is C.S.D., a national of Argentina born on 20 September 1986. The author claims that the State party has violated his rights under article 37 (a) of the Convention. The author is represented by counsel. The Optional Protocol entered into force for the State party on 14 July 2015.

1.2 At the request of the parties, the consideration of the communication was suspended between 1 June 2021 and 25 March 2022 in view of an amicable procedure initiated domestically that did not culminate in an agreement.

1.3 On 14 August 2020, pursuant to article 6 of the Optional Protocol and rule 7 of the Committee's rules of procedure under the Optional Protocol, the Committee, acting through its working group on communications, rejected the author's request to ask the State party to take interim measures consisting of his immediate release. Pursuant to article 8 of the Optional Protocol and rule 18 (4) of the Committee's rules of procedure under the Optional

* Adopted by the Committee at its ninety-fifth session (15 January–2 February 2024).

** 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 Chopel, Rosaria Correa, Bragi Gudbrandsson, Philip Jaffé, Sopia Kiladze, 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 on a communications procedure, Mary Beloff did not participate in the consideration of the communication.



Protocol, the Committee, acting through the working group, requested the State party to submit explanations and statements that related only to the admissibility of the communication.

1.4 On 30 August 2020 and 22 February 2022, the author again asked the Committee to request interim measures that would involve releasing him on parole. On 3 September 2020 and 25 March 2022, respectively, the Committee, acting through its working group on communications, rejected both of the author's requests.

Facts as submitted by the author

2.1 On 25 October 2006, the author was sentenced to 21 years' imprisonment for a series of crimes he had committed when he was 17 years old. He claims that, since he has been detained without interruption since 9 April 2004, he has been entitled to request release for short periods since 9 October 2014 and to apply for parole since 9 September 2017. Since 16 December 2014, the author has requested temporary release five times and release on parole three times. Each time, Federal Criminal Court No. 2 of San Martín¹ and the Federal Criminal Court of Appeal² rejected the author's requests chiefly because of the seriousness of his crimes and his failure to demonstrate sufficient remorse.

2.2 The author notes that he did not lodge extraordinary appeals with the Supreme Court. He explains that, since parole, like temporary release, can be applied for every six months in the event an application is rejected, the rejection is not considered a final judgment or an equivalent thereof and that, in the absence of such a judgment, an extraordinary federal appeal cannot be granted.³ The possibility of periodic reconsideration of the rejection of applications for parole or temporary release on the basis of changes in respect of the facts rules out the option of lodging an extraordinary appeal with the Supreme Court. Consequently, such an appeal would be rejected by the Federal Criminal Court of Appeal, while an application for protection submitted directly to the Supreme Court would not only be rejected but would also require waiting months or years for the rejection.

2.3 The author notes that, to challenge his 21-year prison sentence, he filed a petition, which was found admissible on 14 August 2019, with the Inter-American Commission on Human Rights.⁴ He stresses that, unlike the petition filed with the Commission, the present individual communication relates to the execution of the sentence.

Complaint

3.1 The author claims that the State party has violated his right to periodic review of his sentence and to social reintegration. He argues that the manner in which he is serving his sentence is in breach of article 37 (a) of the Convention and the provisions of the Committee's general comment No. 24 (2019) (paras. 81 and 88) insofar as they prohibit life imprisonment without possibility of release. He emphasizes that, under domestic law, applications for parole can be made, in disregard of the requirements laid out in the Convention and in general comment No. 24 (2019) (para. 6 (v)), only after two thirds of a sentence has been served, not at any time during the proceedings, and on other conditions linked to behaviour during imprisonment.⁵ The author contends that both the failure to ensure that his sentence is subject

¹ On the following dates: 7 July 2015 (refusal to grant temporary release), 16 February 2016 (refusal to grant temporary release), 29 September 2016 (refusal to grant temporary release), 4 October 2017 (refusal to grant temporary release and denial of parole), 28 August 2018 (denial of parole), 12 June 2019 (refusal to grant temporary release) and 8 June 2020 (denial of parole).

² On the following dates: 29 September 2015 (appeal in cassation for temporary release found inadmissible), 28 June 2016 (appeal in cassation for temporary release and release on parole rejected on the merits), 29 December 2017 (appeal in cassation for temporary release and release on parole rejected on the merits), 12 November 2019 (appeal in cassation for release on parole found inadmissible), 30 September 2019 (appeal in cassation for temporary release found inadmissible) and 16 July 2020 (appeal in cassation for release on parole found inadmissible).

³ Act No. 48, art. 14.

⁴ Inter-American Commission on Human Rights, report No. 136/19, petition 1628-09, OEA/Ser.L/V/II, Doc. 145, 14 August 2019.

⁵ Code of Criminal Procedure, arts. 505–510.

to regular review and the refusal to grant him at least the rights provided for in Argentine law for persons serving sentences (regardless of age) are violations of his rights under the Convention. He points out that he met with this refusal even though he produced a complete plan for his possible release, which included a place to live, job opportunities, the support of social organizations and a cooperative of released prisoners that would help him enter the labour market.

3.2 The author also claims that the State party has violated the right to specialized execution of his sentence conferred on him by his status as a child at the time he committed the crimes of which he was convicted. He argues that his status as a child was at no time considered as he served his sentence, which was identical to the sentence he would have been given had he been an adult when he committed the crimes of which he had been convicted. He adds that not even his rights to temporary release and parole, rights enjoyed by all adults deprived of their liberty, are respected. He stresses that the Federal Criminal Court, which has jurisdiction over the execution of his sentence, does not specialize in sentence execution, since it is the court that convicted him, or in children's rights, all in violation of the requirements laid down in general comment No. 24 (2019) (paras. 31 and 105–107).

State party's observations on admissibility

4.1 On 24 August 2022, the State party submitted updated information about the court case on the execution of the author's sentence. It submits that, on 29 June 2022, Federal Criminal Court No. 2 of San Martín decided not to grant the author the parole that he had applied for but made him eligible for temporary release. This decision entitles the author to monthly furloughs of eight hours each, under escort, with a view to helping him strengthen family and social ties. To exercise this right, the author must abide by rules such as: (a) remain at the designated domicile for the entirety of the furlough; (b) refrain from using narcotics or abusing alcoholic beverages; and (c) comply with the schedule foreseen for his return. The decision also entitled the author to temporary study release to attend, for four hours every Friday, a workshop on cooperative activities and micro-enterprises and to participate in specific pre-release programmes with a view to helping him develop tools for a successful return to society. According to the decision, a psychological and social report on the progress made by the author after he has benefited from at least three furloughs is to be drawn up to determine the feasibility, after an assessment of the author's case by the Correctional Council, of extending or changing the level of the furloughs.

4.2 The State party adds that, bearing in mind the principle of the separation of powers and the consequent limitations on the executive authorities' ability to intervene in the judicial process, it considers it appropriate not to make specific comments on the international complaint until the Committee has considered the legal merits of the case in the light of the facts of which it has been apprised and the evidence submitted to it in the context of the international proceedings.

Author's additional comments

5.1 On 27 December 2022, the author submitted additional comments. He confirms that, on 30 June 2022, he was made eligible for a temporary release programme. He adds that, as he had complied with the programme conditions, he applied for an extension of the periods for which he was released, an application that was accepted by the court, albeit not on exactly his terms.

5.2 The author submits, however, that the purpose of his communication is for the Committee to consider the violation of his rights as a person who committed crimes as a child. He has been detained for 18 years, 8 months and 18 days and has enjoyed only one family furlough a month and, for three months, a weekly study and training furlough. He claims that he has been spent five too many years serving a prison sentence that should have come to an end when he met all the requirements for parole, even without considering his status as a child at the time of his crimes. He concludes that, although his situation changed slightly on being granted temporary release, the violation of his right to parole and the complete disregard of his status as a child at the time of the crimes continue to cause him irreparable harm.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee notes that the author has lodged a petition with the Inter-American Commission on Human Rights, which has been found admissible; the consideration of the merits is pending.⁶ The Committee notes the author's argument that, unlike the petition before the Commission, the present individual communication relates to the execution of the sentence, not to the imposition thereof (see para. 2.3).

6.3 The Committee notes that, under article 7 (d) of the Optional Protocol, the Committee will consider a communication inadmissible when the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. The Committee observes that the petition procedure before the Inter-American Commission on Human Rights constitutes a "procedure of international investigation or settlement" within the meaning of article 7 (d) of the Optional Protocol.⁷ The Committee notes, too, that a "matter" within the meaning of the aforementioned provision must be understood as relating to the same complaint concerning the same author, the same facts and the same substantive rights.⁸ The Committee must therefore determine whether the petition filed on behalf of the author and under consideration by the Commission relates to the same facts and the same substantive rights.

6.4 The Committee notes that the present individual communication concerns the execution of a sentence that the author was given for crimes he committed when he was under 18 years of age. For this reason, the Committee is of the view that the author's complaints about the execution of the sentence are closely related to the complaint to the Commission about the imposition of the sentence.⁹ After all, the consideration of the petition pending before the Commission can enable the author to obtain redress for the alleged violations of his rights related to the execution of the sentence. Consequently, the Committee is of the view that the present communication is being examined by the Inter-American Commission on Human Rights and considers it inadmissible under article 7 (d) of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 7 (d) of the Optional Protocol;
- (b) That this decision shall be transmitted to the author of the communication and, for its information, to the State party.

⁶ Inter-American Commission on Human Rights, report No. 136/19, petition 1628-09, OEA/Ser.L/V/II, Doc. 145, 14 August 2019, para. 26.

⁷ See, mutatis mutandis, *Moreno de Castillo v. Bolivarian Republic of Venezuela* (CCPR/C/121/D/2610/2015 and CCPR/C/121/D/2610/2015/Corr.1), para. 8.3.

⁸ *M.F. v. Switzerland* (CRC/C/94/D/125/2020), para. 6.2, and, mutatis mutandis *A.B. v. Finland* (CRC/C/86/D/51/2018), para. 11.2.

⁹ See, to the contrary, *Y and Z v. Finland* (CRC/C/81/D/6/2016), para. 9.2. See also *S.S. v. United Kingdom of Great Britain and Northern Ireland* (CRPD/C/27/D/85/2021), para. 6.4.