



# 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. 190/2022\* \*\*

<i>Communication submitted by:</i>	B.W. (represented by counsel, Marisa Graham, Ombudsperson for Children and Adolescents of Argentina)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Argentina
<i>Date of communication:</i>	15 July 2022 (initial submission)
<i>Subject matter:</i>	Revictimization of a child victim of sexual abuse due to the reversal of the alleged abuser's sentence and the order to hold a retrial eight years after the initial accusations
<i>Substantive issues:</i>	Best interests of the child; right to be heard; right to special protection and assistance from the State
<i>Articles of the Convention:</i>	3, 4, 12, 19, 34 and 39

1. The author of the communication is B.W., a national of Argentina aged 12 years at the time of submission of the communication. He claims that the State party has violated his rights under articles 3, 4, 12, 19, 34 and 39 of the Convention. The Optional Protocol entered into force for the State party on 14 July 2015. The author is represented by counsel.

2. On 4 May 2021, the first chamber of a criminal court at the Capital Judicial Centre of Tucumán sentenced the author's maternal grandfather to 10 years' imprisonment for the offence of sexual abuse committed against the author in 2014, when he was 4 years old. The judgment was appealed by the convicted person before the Supreme Court of Tucumán. The author maintains that, despite having spoken on more than 40 occasions during the proceedings, the Supreme Court of Tucumán again summoned him to give evidence, subjecting him to revictimization. On 27 December 2021, the Supreme Court of Tucumán reversed the sentence against the author's maternal grandfather and ordered a retrial by

\* 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.



another court on the grounds of alleged procedural flaws. On 12 February 2022, the author filed a special federal appeal, which was rejected by the Supreme Court of Tucumán. On an unspecified date, the author filed a remedy of complaint before the Supreme Court of Argentina, which was still pending resolution at the time of submission of the communication. The author claims that the remedy of complaint does not suspend the retrial and requests interim measures to that effect, so that, as a victim of sexual abuse, he will not be revictimized by having to participate in a new criminal trial.

3. In accordance with article 6 of the Optional Protocol, on 26 July 2022, the Committee, acting through its Working Group on Communications, registered the communication and decided not to request interim measures.

4. On 27 September 2022, the State party submitted its observations on the admissibility of the communication and requested that the admissibility be considered separately from the merits. The State party maintains that the communication is inadmissible under article 7 (e) of the Optional Protocol, insofar as the remedy pending before the Supreme Court of Argentina could provide effective relief for the violations alleged by the author.

5. On 12 January 2023, the author submitted his comments on the State party's observations on admissibility. He reiterates that the pending remedy is not effective, since it does not suspend the commencement of the trial, and maintains that the Supreme Court of Argentina has not set a specific time frame in which to decide upon it, with the result that the retrial could commence at any time, in violation of his rights. The author reiterated his request for interim measures.

6. On 26 January 2023, the Committee, acting through its Working Group on Communications, decided to reject the State party's request to consider the communication separately from the merits and the author's request for the Committee to request interim measures.

7. On 29 March 2023, the State party submitted its observations on the merits of the communication; on 31 July 2023, the author submitted his comments on these observations. In his comments, the author again requested the adoption of interim measures, given that the retrial had been scheduled for 4–6 September 2023.

8. On 21 August 2023, the Committee, acting through its Working Group on Communications, again decided to reject the request for interim measures.

9. On 28 August 2023, the State party submitted additional observations on the merits of the communication. On 8 September 2023, the State party informed the Committee that, on 29 August 2023, the Supreme Court of Argentina had decided to uphold the complaint filed by the author and declare the special appeal admissible, setting aside the judgment of the Supreme Court of Tucumán, and had ordered the issuance of a new judgment that would safeguard, in particular, the best interests of the child. The State party reiterated its request for the communication to be declared inadmissible for failure to exhaust domestic remedies.

10. On 14 September 2023, the author, too, informed the Committee of the Supreme Court decision. While welcoming the decision, he maintains that the passage of time continues to work against him, as he has not been able to obtain any reparation from the justice system.

11. Meeting on 26 January 2024, the Committee, having considered the additional information submitted by the parties, observed that the purpose of the present communication was to prevent the author's revictimization through the holding of a retrial. While the Supreme Court judgment of 29 August 2023, which set aside the judgment that reopened the sexual abuse proceedings and ordered a new judgment that safeguards the best interests of the child, does not in itself amount to full reparation for the alleged violations of the Convention, the Committee considers that the decision leaves the present communication devoid of purpose and decides to discontinue consideration of communication No. 190/2022, in accordance with rule 26 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.