Section: **Globalization and Human Rights** – Inter-American Court of Human Rights

Title: **Against the Imposing of Life Sentences on Juvenile Offenders: The Landmark Decision by the Inter-American Court of Human Rights in the *Case of Mendoza* et al. v. *Argentina***

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"[A]ll these individuals sentenced to life imprisonment state that, on hearing the sentence, at first, they are unable […] to understand the scale of what has occurred. And when they do understand it, the effect is devastating; they feel that life has ended and, in many cases, they think the only thing they can do is take their own lives […] this is particularly serious owing to the period of their life during which this occurs; they are not adults who can assume absolute responsibility for their actions, but rather adolescents who are still at a formative stage, who are not yet adults; who, at that psychological moment of their development, are told by the law and the State that this is the end. [T]he effect is truly devastating".

(Expert witness S. Tiscornia)

1. Introduction

In the Argentine Republic, Law 22,278 on the Juvenile Criminal Regime of 25 August 1980 (last amended in 1989 by Law 23,742), which dates from the time of the dictatorship, retains a system in which juvenile offenders are sentenced and/or released according to the provisions of the adult criminal justice system.

Specifically, the said law contains provisions that regulate, *inter alia*, the age for attributing criminal responsibility to persons under 18 years of age, the measures that the judge may adopt before and after this attribution, and the possibility of imposing a criminal sanction following tutelary treatment, the duration of which cannot be less than one year. The determination of punishments, their severity, and the legal definition of offences are regulated in the National Criminal Code, which is equally applicable to adult offenders. Nevertheless, none of these two instruments contains provisions on how the criminal sanctions established in the said code for adults are applied to minors.

In substance, juveniles can receive the maximum penalties allowed under the National Criminal Code (Article 80) – namely reclusion for life (*reclusión perpetua*) or life imprisonment (*privación perpetua de la libertad*) – with no possibility of review or parole for 20 years (Article 13), and sentences where the possibility of release is not reviewed on a regular basis by an independent body to determine whether they have been rehabilitated or if release would be appropriate.

On 17 June 2011, the Inter-American Commission on Human Rights (IACommHR, Commission) submitted to the jurisdiction of the Inter-American Court of Human Rights (IACtHR, Court) the case of *Mendoza* et al. v. *Argentina*, which referred to the alleged international responsibility for human rights violations of the Argentine Republic for the imposing of life sentences against five people – life imprisonment on César Alberto Mendoza, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal, and reclusion for life on Claudio David Núñez – for crimes committed while under 18 years of age (all of the victims were

between the ages of 16 and 17 when they committed the crimes for which they were given life sentences).

On 14 May 2013, the IACtHR rendered a decision of utmost importance, which was not intended to contest the criminal responsibility of the five youths, but rather the imposing of life imprisonment and reclusion for life on them, in application of a juvenile justice system that allowed adolescent offenders to be treated the same as adult offenders.

2. Factual Framework of the Case

César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández grew up in underprivileged neighbourhoods, in situation of substantial socio-economic vulnerability and exclusion, with a shortage of material resources that influenced their overall development. Most of them came from broken families, which resulted in imperfect models for the development of their behaviour and identity. They abandoned their primary and secondary studies before completing them, and had their first contact with the criminal justice system at an early age, signifying that they spent much of their childhood in juvenile institutions.

On 28 October 1999, César Alberto Mendoza was declared by the Oral Juvenile Court No. 1 of the Autonomous City of Buenos Aires co-perpetrator criminally responsible for the concurrent offences of four counts of armed robbery, two counts of aggravated homicide, and serious injuries. Based on Law 22,278, he was sentenced to life imprisonment for the crimes committed when he was under 18 years of age.

On 12 April 1999, Claudio David Núñez and Lucas Matías Mendoza were prosecuted together by the Oral Juvenile Court No. 1 of the Autonomous City of Buenos Aires. Claudio David Núñez was declared criminally responsible for the separate but concurrent crimes of five counts of

aggravated homicide, eight counts of aggravated armed robbery, two of them attempted, illegal possession of a weapon of war, and unlawful association. Lucas Matías Mendoza was declared responsible for the crimes of two counts of aggravated homicide, aggravated armed robbery, illegal possession of a weapon of war and unlawful association. The judgment sentenced the youth Claudio David Núñez to reclusion for life, and the youth Lucas Matías Mendoza to life imprisonment. Both were under 18 years of age when they committed the crimes of which they were accused.

On 8 March 2002, Saúl Cristian Roldán Cajal, declared criminally responsible for committing the separate but concurrent crimes of aggravated homicide with aggravated robbery, was sentenced to life imprisonment by the Juvenile Criminal Court of the First Judicial District of the province of Mendoza, without the benefit of a reduced sentence established in Article 4 of the Law 22,278. The crimes of which he was accused occurred when he was a minor.

On 28 November 2002, Ricardo David Videla Fernández was declared by the Juvenile Criminal Court of the First Judicial District of the province of Mendoza criminally responsible for committing the concurrent but separate offences of two counts of aggravated homicide with aggravated robbery, attempted robbery, aggravated robbery, possession of weapons of war, and also aggravated robbery, aggravated coercion and illegally carrying an arm for civilian use, and was sentenced to life imprisonment. All of the offences of which he was accused took place while he was under 18 years of age.

The reviews of the sentences occurred after a long time. On 9 March 2012, the Second Chamber of the Mendoza Supreme Court of Justice decided to set aside the judgment sentencing Saúl Cristian Roldán Cajal to life imprisonment. Based on the IACommHR's Report on merits No. 172/10, issued on 2 November 2010, the said court decided to impose on him 15 years' imprisonment. On 21 August 2012, the Federal Criminal Cassation Chamber annulled the judgments sentencing César Alberto Mendoza and Lucas Matías Mendoza to life imprisonment, and Claudio David Núñez to reclusion for life, and declared that paragraph 7 of Article 80 of the

National Criminal Code was unconstitutional "as regards the punishment of life imprisonment established for children and adolescents". As for Ricardo David Videla Fernández, after his conviction, he was deprived of liberty for around four years until his death in the Mendoza Provincial Prison.

3. Considerations of the IACtHR on the Conventionality of Sentencing Individuals to Life in Prison for Crimes They Committed as Minors

The specific issue raised in the case of *Mendoza* et al. v. *Argentina* was directly related to sentencing children to criminal sanctions. More notably, the present case involved the conventionality of sentencing individuals to life in prison for crimes they committed as minor.

In this judgment, the Court found it relevant to reiterate that children are bearers of all the rights established in the American Convention on Human Rights (ACHR), in addition to the special measures of protection called for in Article 19 (Rights of the Child) of this instrument

("Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state"),

which must be defined according to the particular circumstances of each specific case. Special measures are of huge significance in the context of juvenile detention, where children in the prime of development are deprived of their liberty. Children must receive special treatment as a response to the reality that they are differently situated than adults. In this respect, Article 5(5) (Right to Humane Treatment) ACHR indicates that

> "[m]inors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors".

An obvious consequence of the importance of dealing in a differentiated, specialized and proportionate manner with matters pertaining to children, and expressly those relating to illegal conduct, is the establishment of specialized jurisdictional bodies to hear cases involving conduct defined as crimes attributed to them. If it is not possible to avoid the intervention of the courts, children under the age of 18 who are accused of conduct defined as criminal in nature by criminal law must be subject, for the purposes of the respective hearing and the adoption of the pertinent measures, only to specific jurisdictional bodies distinct from those for adults.

According to the principle of specialization, a justice system should be established that is specialized at all stages of the proceedings and during the execution of the measures or punishments that are eventually applied to minors who have committed offences and who can be held responsible under domestic law. This should involve both the legislation and the legal framework, and also the State institutions and agents specialized in juvenile criminal justice. It also entails the application of special legal rights and principles that protect the rights of children accused or convicted of an offence.

Moreover, Rule 5(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by the United Nations General Assembly in Resolution 40/33 of 29 November 1985, stipulates that

> "[t]he juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence".

The ACHR does not include a list of punitive measures that Member States may impose on juveniles convicted of crimes. Nevertheless, in order to determine the legal consequences of the offence committed by a child, the principle of proportionality is a relevant criterion. In accordance with this principle, there must be a balance between the presumptions and the punishment, both as regards the individualization of the punishment and its judicial application. Hence, the principle of

proportionality means that any response regarding children who have committed a criminal offence must always be adjusted to their status as minors and to the offence, giving priority to reintegration with the family and/or society.

The ACHR does not refer expressly to life imprisonment or reclusion for life. However, according to Article 5(6) (Right to Humane Treatment) of this instrument

> "[p]unishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners".

In this regard, Article 40(1) of the United Nations Convention on the Rights of the Child (CRC) indicates that

> "every child alleged as, accused of, or recognized as having infringed the penal law [has the right] to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".

As a result, the measure that should be ordered in consequence of the perpetration of an offence must have the objective of the child's social reinsertion. In other words, the proportionality of the sentence is intimately related to its purpose. In the opinion of the IACtHR, life imprisonment and reclusion for life do not achieve the aforesaid objective. On the contrary, such sentences entail the maximum exclusion of the child from society and, therefore, are not proportionate to the purpose of the criminal sanction of children. They function in a merely retributive sense, because the expectations of re-socialization are annulled to their highest degree.

Consequently, the IACtHR found that Argentina had violated the right recognized in Article 5(6) (Right to Humane Treatment) ACHR, in relation to Articles 19 (Rights of the Child) and 1(1) (Obligation to Respect Rights) of this instrument to the detriment of César Alberto Mendoza,

Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, by imposing on them sentences of life imprisonment and reclusion for life, respectively.

The Court reiterated that no one may be subjected to arrest or imprisonment for reasons and using methods that – although classified as legal – can be considered incompatible with regard to the fundamental rights of the individual, because they are, among other matters, unreasonable, unpredictable, or disproportionate. Additionally, in accordance with Article 37(b) CRC, "[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily". It follows that, if judges decide that it is necessary to apply a criminal sanction, and if this is deprivation of liberty, although this is provided for by law, its application may be arbitrary if the fundamental principles contained in the international laws on the rights of the child that regulate this matter are not taken into consideration.

First and foremost:

1) *ultima ratio* and as short as possible, which in the terms of Article 37(b) CRC, signifies that "[t]he arrest, detention or imprisonment of a child […] shall be used only as a measure of last resort and for the shortest appropriate period of time";

2) temporal determination from the moment measures or sentences involving the deprivation of liberty of children are imposed, because if deprivation of liberty must be the exception and for as short a time as possible, this indicates that prison sentences with an indeterminate duration or that entail the absolute deprivation of this right must not be applied to children;

3) periodic review of such measures. If the circumstances have changed and reclusion is no longer required, States have the obligation to release children, even when they have not completed the sentence established in each specific case. To this end, States must provide early release programs in their legislation.

Based on the above, and in view of the principle of the best interests of the child provided for in Article 3(1) CRC

> ("In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"),

life imprisonment and reclusion for life for children are incompatible with Article 7(3) (Right to Personal Liberty) ACHR

> ("No one shall be subject to arbitrary arrest or imprisonment"),

because they are not exceptional punishments, they do not entail the deprivation of liberty for the shortest appropriate period of time or for a period specified at the time of sentencing, and they do not permit a regular periodic review of the need to keep children deprived of liberty with a view to the possibility of release.

The case file before the IACtHR showed that the respective judicial authorities had acted with unashamed disrespect for the aforementioned international standards that apply in the case of juvenile criminal justice. As a result, the IACtHR concluded that Argentina had violated the right recognized in Article 7(3) (Right to Personal Liberty) ACHR to the detriment of César Alberto Mendoza, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández and Claudio David Núñez, in relation to Articles 19 (Rights of the Child) and 1(1) (Obligation to Respect Rights) of this instrument, by sentencing them to life imprisonment and reclusion for life, respectively, for the perpetration of offences while still minors.

The Court also examined whether this type of sentence had constituted cruel, inhuman and degrading treatment in the terms of the ACHR. Article 5(2) (Right to Humane Treatment) of this instrument stipulates that

> "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person".
>
> Similarly, Article 37(a) CRC establishes that
>
> "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. […] life imprisonment without possibility of release shall [not] be imposed for offences committed by persons below eighteen years of age",

disclosing an evident linkage between the two prohibitions.

Even though most relevant treaties on human rights only establish that "no one shall be subject to torture or to cruel, inhuman or degrading treatment", however the dynamic nature of the interpretation and application of this branch of international law has allowed a requirement of proportionality to be inferred from norms that make no clear reference to this element. This is true of the prohibition of torture as a form of persecution and punishment as well as other forms of cruel, inhuman and degrading treatment, and other areas, including those of State sanctions – especially corporal punishment, the death penalty, and life imprisonment – for the perpetration of offences. Consequently, punishments considered drastically disproportionate, such as those that can be described as atrocious, fall within the sphere of application of the articles that contain the prohibition of torture and cruel, inhuman and degrading treatment.

In this regard, the IACtHR quoted the Strasbourg jurisprudence. In the judgment in the cases of *Harkins* and *Edwards* v. *The United Kingdom*, delivered on 17 January 2012, the European Court of Human Rights (ECtHR) had established that a grossly disproportionate sentence may amount to ill-treatment contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) – which corresponds to Article 5 ACHR – at the moment of its imposition.

In the present case, the expert opinion provided by Laura Sobredo by affidavit on 23 August 2012, and those provided by Miguel Cillero Bruñol and Sofía Tiscornia before the IACtHR at the public hearing held on 30 August 2012, referred to the extreme psychological impact of imposing a life sentence on the victims, who at that stage of their development were told by the law and the State that this was the end of any plans for the future, that they had no future, noting. This sentence imposed on the victims "a life project, but for a life that implies the end, the closure, of all autonomy and decent social existence" (expert witness Sofía Tiscornia). "The extreme conditions that these young people were subjected to by State institutions from the early stages of their lives are a clear example of the serious difficulty or, eventually, the impossibility of maintaining mental integrity as far as identity is concerned, and a frightening example of how this situation can end a human life" (expert witness Laura Sobredo). When the victims realized the magnitude of their punishment, the effect was devastating: nothing was important to them any longer because they felt that they were being killed in life.

Furthermore, the reviews of the sentences of the juveniles César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal occurred after approximately 12 years. Considering that, at the time of the facts of the instant case, Article 13 of the National Criminal Code established parole for those sentenced to life imprisonment and reclusion for life after they had served 20 years of the sentence, for these minors the expectations of liberty were minimal.

From the foregoing, the IACtHR found that the disproportionality of the sentences imposed on the victims was evident and the truly devastating effect produced by a similar guilty verdict had constituted cruel and inhuman treatment. Consequently, the IACtHR declared that Argentina had violated the rights recognized in Articles 5(1) (Right to Humane Treatment) ACHR

("Every person has the right to have his physical, mental, and moral integrity respected")

and 5(2) (Right to Humane Treatment) ACHR, in relation to Articles 19 (Rights of the Child) and 1(1) (Obligation to Respect Rights) of this instrument, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla.

The Court was also asked to ascertain the violation of Article 2 (Domestic Legal Effects) ACHR

("Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms"),

in relation to the imposing of sentences of life imprisonment and reclusion for life on minors. Law 22,278 grants a broad margin of discretion to the judge to determine the legal consequences of the perpetration of an offence for juveniles who have not yet attained 18 years of age, based not only on the offence, but also on other aspects, such as "the minor's background, the result of the tutelary treatment, and the direct impression made on the judge" (Article 4). Besides, judges may impose on juveniles the same sanctions as on adults including the deprivation of liberty (as in the present case), and these sanctions are provided for in the National Criminal Code. According to the Court, the consideration of elements other than the offence committed, as well as the possibility of imposing on minors criminal sanctions established for adults, are contrary to the principle of proportionality in the criminal sanction of minors.

In addition, the sanctions provided for in Article 13 of the National Criminal Code are contrary to the ACHR, because the fixed period following which release can be requested – i.e. 20 years – does not take into consideration the circumstances of each child, which change with the passage of time and, at any moment, could reveal progress that would enable social reintegration. Furthermore, instead of meeting the standard of periodic review of the sanction of deprivation of liberty, the

period established in the aforesaid article is a patently disproportionate time frame for children to be able to request their release for the first time, and to be able to reintegrate into society, given that, in order to request their eventual release, they are forced to remain imprisoned for a number of years that is more than any adolescent has lived before the perpetration of the offence and the imposing of the punishment, bearing in mind that, in Argentina, children from 16 to 18 years of age can be charged under Article 2 of Law 22,278.

The State had maintained that the situation of the incompatibility of the determination, execution and periodic review of the criminal sanction of juveniles had been resolved with Law No. 26,061 on the Comprehensive Protection of Children and Adolescents. Nonetheless, as remarked by the Court, this law – adopted on 2005, after the criminal sanctions that were the subject of this case had been imposed – generically regulates the so-called "Comprehensive Protection System for the Rights of Children and Adolescents" and, thence, the "[p]olicies, plans, and programs for the protection of rights", the "[a]dministrative and judicial bodies for the protection of rights", the "[f]inancial resources", the "[p]rocedures", the "[m]easures of protection for rights" and the "[m]easures of exceptional protection of rights" (Article 32). Even though Law No. 26,061 refers, *inter alia*, to some aspects of the "rights of children and adolescents", the "minimum procedural guarantees" and the "guarantees in judicial and administrative proceedings" (Article 27), the aspects concerning the determination of criminal sanctions for children are governed by Law 22,278 and by the National Criminal Code.

Therefore, the IACtHR concluded that Argentina had failed to comply with the obligation contained in Article 2 (Domestic Legal Effects) ACHR, in relation to Articles 7(3) (Right to Personal Liberty) and 19 (Rights of the Child) thereof, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal.

4. Measures the IACtHR Ordered Argentina to Remedy the Consequences of the Life Sentences Imposed on the Victims

Based on the provisions of Article 63(1) ACHR, the IACtHR determined the measures of reparations necessary to remedy the consequences of the State's imposition of sentences of life imprisonment and reclusion for life on the five juvenile offenders.

On account of the psychological and moral impact of the life sentences imposed on the victims, based on which the Court considered them cruel and inhuman treatment, the Court ordered Argentina to provide, immediately and free of charge, through its specialized health care institutions and personnel, the necessary psychological or psychiatric care to the juveniles César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal, taking into consideration the ailments of each one related to this case.

The IACtHR also recognized the damage to the "life project" (or "life plan") of the youths, which implies the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of a person prospect of self-development. In this judgment, the IACtHR established that the life sentences imposed on the victims had not met the standards of the rights of the child with reference to criminal justice, and had had damaging effects that had ended their future expectations of life. Imposing life sentences on these minors, and the absence of any actual opportunity of achieving social rehabilitation, had ruined their future perspective of forming a life project at a decisive stage of their education and their personal development. Thus, the IACtHR ordered Argentina to provide César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal, as soon as possible, with the formal educational or training options requested by them, including university studies, through the prison system or, in case of their release, through its public institution, to enable them to meet the requirements of an adequate education.

With regard to legislative and administrative measures as guarantees of non-repetition, the IACtHR assessed positively that, following the facts of the present case, in the Maldonado judgment, the Supreme Court of Justice of the Nation had established important criteria concerning the incompatibility of life imprisonment with the rights of the child. The IACtHR also remarked the entry into force of Law No. 26,061 on the Comprehensive Protection of Children and Adolescents, which establishes that application of the CRC is mandatory in every administrative, judicial or any other type of act, decision or measure adopted in their regard. Nonetheless, Law 22,278, which regulates the juvenile criminal regime in Argentina and which was applied in this case, contains provisions contrary to the ACHR and to the international standards applicable to juvenile criminal justice.

Therefore, in order to comply with the obligation to guarantee, by the adoption of the necessary legislative or other measures, the protection of the child by the family, society and the State, according to Articles 19 (Rights of the Child), 17 (Rights of the Family), 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) ACHR, the Court ordered Argentina to adapt its legal framework to the international standards relating to juvenile criminal justice; to design and implement public policies with clear goals and timetables, in addition to the allocation of sufficient budgetary resources for the prevention of juvenile delinquency by means of effective programs and services that encourage the integral development of children and adolescents; to disseminate information on the international standards pertaining to children's rights, and to provide support to the most vulnerable children and adolescents, as well as to their families.

The IACtHR also decided that Argentina had to ensure that the sentences of life imprisonment and reclusion for life would have never again been imposed on César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, or on any other person for crimes committed while a minor. Furthermore, the State had to guarantee that anyone who was serving such sentences for offences committed while under 18 years of age would have obtained a review of the sentence, so as to avoid the need for cases – such as the case in question – being lodged before the organs of the

Inter-American Human Rights System, and that they could be decided by the corresponding domestic organs.

Moreover, the Court ordered as compensation for non-pecuniary damage (or moral damage) – which may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings or alterations in the living conditions of the victims or their families that cannot be assessed in financial terms –, in favour of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, the amount of US$2,000.00 (two thousand United States dollars) for each of them.

The IACtHR also established, in equity, amounts for the victims' next of kin, in consequence of the impotence and anguish that the unlawful sentencing of the victims to life imprisonment and reclusion for life had caused to their families.

5. Conclusion

The case of *Mendoza* et al. v. *Argentina* has highlighted important questions concerning the functioning of the system of the administration of juvenile justice in the Argentine Republic that – as stated by the Chilean jurist and juvenile criminal-law expert Miguel Cillero Bruñol – is the only Latin American country whose legislation provides for the possibility to sentence juveniles between ages of 16 and 18 to life in prison, despite that State being a party to the ACHR, CRC and the United Nations International Covenant on Civil and Political Rights (ICCPR).

In the Argentine Republic there is no special juvenile criminal justice system or special penalties for minors as ordered by various international legal instruments, so that in that country the young are treated as adults, disregarding that the safeguards and the defining human rights

principles of juvenile justice are based on the juveniles' age, vulnerability, cognitive development, and capacity for change.

In the present case, juvenile criminal justice system was applied with restrictive criteria such that, while they enjoyed the juridical condition of "children", the victims were sentenced to life imprisonment and reclusion for life, respectively, without any distinction having been made in relation to the punishment applicable to an adult. The importance of assessing whether or not they could even be imprisoned was overlooked, as was the standard of minimal intervention if imprisonment is indicated, according to the conventional framework on juveniles. The judges imposed the most restrictive sentence possible under domestic criminal legislation on the five youths, without interpreting the legislation in force in light of the principles emanating from international instruments for the protection of human rights:

- the principle of subsidiarity of a prison sentence for juveniles;
- the principle of equality and non-discrimination;
- the principle of the best interests of the child provided for in Article 3(1) CRC;
- the special measures of protection required by Article 19 (Rights of the Child) ACHR;
- the principle of differentiated treatment;
- the principle of deprivation of liberty as a measure of last resort and for the shortest appropriate period of time;
- the principle of periodic review of the detention measures and the possibility of release;
- the principle of lesser criminal responsibility of children in conflict with the law;
- the principle of social reintegration and rehabilitation of juveniles convicted of crimes.

The State acknowledged that there had been a "judicial error" in the specific case of the said victims, since "the courts involved […] sentenced them to life imprisonment, which was forbidden by the principle of *nulla poena sine culpa*, according to the criteria of the Supreme Court of Justice of the Nation in the 'Maldonado' judgment". Besides, the State acknowledged that this "same

shortcoming is apparent in the context of the execution of the sentences, because both the technical defence and the judges concerned based their interventions on norms that were manifestly inapplicable to the case".

As demonstrated by the experiences suffered by the victims, it is very distressful for a child offender to have to tolerate life sentence. A similar guilty verdict is particularly harsh for children: such sentences cause traumatic and indelible effects on minors, and therefore represent a disproportionate and excessive penalty that should only be established for adults. Life sentences affect human dignity and constitute *per se* violation of the prohibition of cruel and inhuman treatment because of the mental and physical suffering they impose on juvenile offenders, and increase the risk that they will be subjected to violence, in violation of the State's specific obligation to protect them from attacks by third parties, including other inmates.

The case of *Mendoza* et al. v. *Argentina* has offered a chance for the IACtHR to issue an explicit statement regarding a number of practices that have damaging and irreversible effects for youth who come into conflict with the law, to set forth unambiguous standards in the area of juvenile sentencing, and to indicate that any juvenile life sentence, including one where there is a lengthy period before the possibility of review or without a mechanism for the realistic and regularized consideration of early release, is in breach of the basic international human rights standards on juvenile justice.

Domestic Law

Law No. 22,278 on the Juvenile Criminal Regime of 1980

Law No. 26,061 on the Comprehensive Protection of Children and Adolescents of 2005

National Criminal Code

National Judicial Decisions

Supreme Court of Justice of the Nation (Judgment) 7 December 2005, Case No.1174, *Maldonado, Daniel Enrique* et al.

Bibliographical References

CHILD RIGHTS INTERNATIONAL NETWORK, *César Alberto Mendoza* et al. *(Judicial Review)*, 30 August 2012, <www.crin.org/en/library/legal-database/cesar-alberto-mendoza-et-al-judicial-review>.

G.F. KNOBLACH, "César Alberto Mendoza *et al. v.* Argentina: Argentina is Violating International Law by Sentencing Juvenile Offenders to Life Imprisonment", 4 *Inter-American and European Human Rights Journal* (2011), pp. 23-46.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Report No. 26/08, César Alberto Mendoza* et al. *(Case 270-02),* 14 March 2008, OEA/Ser.L/V/II.130 Doc. 22.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Report No. 172/10, César Alberto Mendoza* et al. *(Juveniles Sentenced to Life Time Imprisonment) (Case 12.651),* 2 November 2010.

INTER-AMERICAN COURT OF HUMAN RIGHTS, *Amicus Curiae Brief – Case No. 12,651 César Alberto Mendoza* et al. *(Perpetual Imprisonment and Confinement of Adolescents)* v. *Argentina*, 14 September 2012.

N. ESPEJO-YACSIK, "Mendoza *v.* Argentina: Against the Life Imprisonment for Children", 23 July 2013, <ohrh.law.ox.ac.uk>.

S. VANNUCCINI, "La protezione dei minori di età nella prassi della Corte interamericana dei diritti dell'uomo", LXVIII *La Comunità Internazionale* (2013), pp. 109-133.

S. VANNUCCINI, "Le misure di riparazione decise dalla Corte interamericana dei diritti dell'uomo per violazioni che coinvolgono i minori di età", LXVIII *La Comunità Internazionale* (2013), pp. 517-543.

S. VANNUCCINI, "La *'justiciabilidad'* del diritto all'istruzione dinanzi alla Corte interamericana dei diritti dell'uomo", *Federalismi.it. Rivista di diritto pubblico italiano, comunitario e comparato* – Focus *Human Rights* n. 3 (2013), pp. 1-25.

S. VANNUCCINI, "Protecting 'At-Risk Children': The Pioneering and Paradigmatic *'Street Children' Case (Villagrán Morales* et al. v. *Guatemala)* before the Inter-American Court of Human Rights – Part I", 29 October 2012, <diritti-cedu.unipg.it>, pp. 1-33.

S. VANNUCCINI, "Protecting 'At-Risk Children': The Pioneering and Paradigmatic *'Street Children' Case (Villagrán Morales* et al. v. *Guatemala)* before the Inter-American Court of Human Rights – Part II", 28 February 2013, <diritti-cedu.unipg.it>, pp. 1-39.

UNITED NATIONS CHILDREN'S FUND AND ARGENTINE NATIONAL SECRETARIAT FOR CHILDREN, ADOLESCENTS AND THE FAMILY, *Adolescentes en el Sistema Penal, Situación actual y propuesta para un proceso de transformación*, September 2008, 1st ed.

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