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CASE 13.079

REPORT ON ADMISSIBILITY AND MERITS (PUBLICATION)

DIEGO ARMANDO PACHECO
ARGENTINA

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I. INTRODUCTION¹

1. On May 12, 2004, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Mr. Arnaldo Hugo Barone, Public Defender, and Mr. Jorge Fabricio Benesperi, Secretary, of the Public Defense Office of the province of Chubut, as the defense attorneys for Diego Armando Pacheco (hereinafter “the petitioners”). In that brief, the petitioners alleged the international responsibility of the Republic of Argentina (hereinafter “the state of Argentina,” “the state,” or “Argentina”) for allegedly violating Mr. Pacheco’s right to appeal his conviction in criminal proceedings in which he was sentenced to four years prison for an offense he had committed when he was 17 years old.

2. On January 22, 2018, the Commission notified the parties of its decision to apply Article 36(3) of its Rules of Procedure because the petition met the criteria set forth in its Resolution 1/16. It also indicated that it was at the disposal of the parties to work towards reaching a friendly settlement. The parties had abided by the statutory time-limits to submit their additional observations on the merits. All of the information received was duly forwarded to the respective parties.

II. ALLEGATIONS OF THE PARTIES

A. Petitioners

3. First of all, the petitioners reported that, on the basis of the judgment of May 19, 2000, the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia had ruled that Diego Armando Pacheco was criminally culpable for the crime of manslaughter. They also stated that Mr. Pacheco was required to undergo remedial custodial treatment until he became of legal age in conformity with Law 22.278.

4. Along this same line, they indicated that, on September 17, 2002, the First Chamber of the Criminal District Court decided to sentence Diego Armando Pacheco to four years prison in connection with its judgment of criminal culpability previously issued against him, when considering, under other circumstances, that he had not shown the necessary responsibility in remedial custodial treatment.

5. The petitioners stated that this sentence had been arbitrary, absurd, and devoid of substantiation and breached the petitioner’s rights as enshrined in the Convention on the Rights of the Child. Along that line, they argued that the reasons why Pacheco was sometimes unable to attend the remedial custodial treatment that was ordered was because of volunteer and material deficiencies and failures of the state, which should have provided the minimum facilities for him to undergo treatment and did not do so.

6. Furthermore, regarding the right to appeal a judgment of conviction, the petitioners reported that, with respect to the judgment of September 17, 2002, two cassation appeals were filed and ruled inadmissible by the Superior Court of Justice of Chubut on December 16, 2002. The petitioners contended that, to issue said ruling, the Superior Court argued that the law only permitted the court of cassation to interpret the law underlying a judgment of conviction but not to re-examine the facts of the case. As a result, the petitioners deemed that the above-mentioned judgment was tantamount to an *in limine* dismissal of the appeal.

7. The petitioners added that, in view of the ruling dismissing the cassation appeals, an special federal appeal was filed. Nevertheless, they reported that, on June 30, 2003, the Superior Court of Justice of Chubut turned down this appeal because it had not met the requirements for admissibility. They pointed out that, as a result of the above, a complaint was filed, which was dismissed on November 11, 2003 by the Federal Supreme Court of Justice because it had not been filed within statutory time-limits.

¹ Pursuant to Article 17.2 of the Commission’s Rules of Procedure, Commissioner Andrea Pochak, an Argentine national, did not participate in the debate or decision in this case.

8. The petitioners alleged that, because they were not allowed to exercise their right to appeal the judgment of conviction, Diego Armando Pacheco was deprived of his liberty, a circumstance that led to suffering, resistance, and anxiety because of the conditions of his incarceration. In addition, the indicated that, when released, Mr. Pacheco did not receive any kind of support to promote his social, employment, or emotional reinsertion; that the conditions of his livelihood were undermined by social discrimination because of his status as a former convict, which prevented him for securing employment to meet his needs.

9. Because of the above, the petitioners alleged the violation of the right to appeal the judgment to the detriment of Diego Armando Pacheco, in connection with the rights to judicial protection and special measures for the protection of children and adolescents, because he was systematically denied the right to challenge and request a re-examination of the judgment of conviction that sentenced him to four years prison, which had severe repercussions on his life.

10. On the matter of the case's admissibility by the IACHR, the petitioners indicated that the petition was filed with the Commission after the Supreme Court dismissed the complaint filed against dismissal of the special federal appeal, on the basis of which the requirement for prior exhaustion of remedies under domestic law had been met. As for the six-month period required by Article 46(1)(b) of the American Convention on Human Rights, the representatives of Mr. Pacheco indicated that it was also observed as the petition was filed with the IACHR on May 11, 2004, although they had not yet been officially informed of the Supreme Court's ruling, which was issued on November 11, 2003.

11. By virtue of the above, the petitioners contend that the state of Argentina is responsible for violating the rights to humane treatment, to personal liberty, and to appeal the judgment to a higher court as enshrined in Articles 5, 7, and 8(2)(h) of the American Convention on Human Rights.

B. State of Argentina

12. The state alleged, first of all, that the petition should be ruled inadmissible, because there was an improper exhaustion of remedies under domestic law, as the complaint filed against the dismissal of the special federal appeal was submitted after the statutory time-limits, which had prevented the Supreme Court from examining the proceedings in the lower courts.

13. In that regard, it indicated that the suitability of the complaint that was filed was incontrovertible because it turned out to be effective to question the final judgment made by the Superior Court in the case, to the extent that there was a federal matter involved as evident in Mr. Pacheco's case. It also contended that said remedy was effective because the Supreme Court, in the case of *Casal, Matías Eugenio et al. ref./ attempted common theft*, established the scope that should be allowed in a cassation appeal in the federal courts so that it would be adjusted to what was established by Article 8(2)(h) of the American Convention on Human Rights.

14. The state contended that, in the event that the complaint were admissible as a result of the extension of the time-limits because of distance, the petitioners had not challenged said judgment by filing an appeal for annulment, because of which the remedies under domestic law had not been exhausted. It also pointed out that said situation would have led to a favorable response, as it occurred in the Supreme Court's case law and, therefore, it was not admissible to submit to an international instance aspects that that had not been elucidated in the domestic judicial system.

15. Moreover, the state indicated that the offense referring to the violation of the right to secure a full review of the judgment of conviction was not filed within statutory time-limits, for the purpose of providing the judicial bodies that had intervened with the possibility of examining the alleged violation. In that respect, it contended that, in its legal system, those offenses were filed and processed by means of the so-called "insertion of the federal matter" in relevant court of proceedings.

16. It also indicated that the rights enshrined in the American Convention benefited from constitutional status and, because of that, any dispute in connection with those rights constituted a "federal matter," which should be introduced at the first procedural opportunity the parties might have for it to be examined

adequately and on a timely basis, so that the judicial bodies having jurisdiction could examine it and issue a ruling.

17. It also alleged that the petitioners should have presented the offense involving the absence of an appeal for a full re-examination on the first procedural opportunity available, whether during the preliminary criminal investigation or else during the substantiation during the verbal discussion. Along this line of ideas, it indicated that said offense was not submitted when the judgment was issued, holding Diego Armando Pacheco criminally culpable for the crime of manslaughter, in order to give the state's judicial bodies the opportunity to rule on the matter. Because of this, it added that, by not filing the complaint on a timely basis and then submitting it to an international instance, it would not be proper for the Commission to review the matter.

18. Furthermore, the state indicated that the province of Chubut had been one of the pioneers nationwide in designing and implementing reforms to indictment proceedings and that the Code of Criminal Procedures in force in said province would organize a trial especially on the basis of hearings, which were governed by the principles of publicity, contradiction, concentration, intermediation, simplification, and expediency. Specifically with respect to the system of appeals, it indicated that said Code enshrined the right of the accused to benefit from a full review of the judgment of conviction.

III. ANALYSIS OF ADMISSIBILITY

A. Competence and duplication of proceedings and international *res judicata*

Competence <i>ratione personae</i> :	Yes
Competence <i>ratione loci</i> :	Yes
Competence <i>ratione temporis</i> :	Yes
Competence <i>ratione materiae</i> :	Yes, American Convention on Human Rights (ratification instrument deposited on September 5, 1984)
Duplication of proceedings and international <i>res judicata</i> :	No

B. Exhaustion of remedies under domestic law

19. Article 46(1)(a) of the American Convention provides that, for a petition filed with the Inter-American Commission to be deemed admissible, remedies under domestic law must have been previously pursued and exhausted in accordance with generally recognized principles of international law.

20. In the instant case, the Commission observes that the state expressed, throughout the processing of the petition, three different allegations in connection with the petitioners' failure to meet the requirement of prior exhaustion of remedies under domestic law, namely: i) inadequate exhaustion of remedies under domestic law because of the filing of a complaint past statutory time-limits; ii) the failure to exhaust the remedy of filing an appeal for annulment in the event that dismissal of the above-mentioned remedy of complaint had not been settled in accordance with domestic law; and iii) the filing past statutory time-limits of the federal matter under the jurisdiction of the Supreme Court which is then submitted to the Commission.

i) Improper exhaustion of remedies under domestic law because of the possible submittal past statutory time-limits of the complaint appeal with the Federal Supreme Court of Justice

21. First of all, the Commission deems it must specify that the requirement of prior exhaustion of remedies under domestic law is aimed at allowing national authorities the opportunity to hear the alleged violation of a

protected right and, if appropriate, to adopt a solution for the situation being submitted to them before it is evaluated by the inter-American human rights system.²

22. Analysis of fulfillment of this requirement must be conducted case by case, taking into consideration the characteristics of each case and the connection between the situation being submitted to the Commission and how remedies under domestic law were invoked.³ It is also the IACHR's reiterated jurisprudence that the petitioner must exhaust domestic remedies in conformity with domestic procedural law.⁴

23. On the basis of information appearing in the case file, the Commission notes that the last procedural activities in the domestic judicial system by Mr. Pacheco's attorneys was the filing of a complaint with the Federal Supreme Court of Justice challenging the ruling of the Superior Court of Justice of Chubut of June 30, 2003 which dismissed the special federal appeal filed with that Court.⁵

24. Regarding the extraordinary appeals, the Commission recalls that although, in principle, it is not necessary to exhaust extraordinary remedies in all cases, in case the petitioners believe they might secure a favorable outcome from the remedy filed against the allegedly violated legal situation and decide to resort to this option, they must exhaust the remedies in conformity with the procedural regulations currently in force, as long as the conditions of access to these remedies are reasonable.⁶ As a result, the IACHR shall take into consideration, for the purpose of assessing compliance with the requirement set forth in Article 46(1)(a) of the American Convention, the complaint filed with the Supreme Court of Justice against dismissal of the special federal appeal filed by the petitioner's attorneys.

25. In that regard, the IACHR highlights that said complaint appeal was ruled inadmissible by the Supreme Court of Justice because it had been submitted after the statutory time-limits. To issue its ruling in that way, the Supreme Court, in its judgment, invoked Article 285 of the Federal Code of Civil and Commercial Procedures and referred to the second paragraph of Article 282 of the Code, which stipulates that "the time-limit to file the complaint shall be FIVE (5) days, with an extension admissible because of distance, in accordance with the provision of Article 158."

26. The Commission underscores that the above-mentioned Article 158 of the Federal Code of Civil and Commercial Procedures establishes that "for all proceedings to be filed in the Republic and outside the headquarters of the court or tribunal, the time-limits set by the present Code shall be extended by ONE (1) day for every TWO HUNDRED (200) kilometers or fraction thereof not lower than ONE HUNDRED (100) kilometers." According to the information provided by the petitioners, which was not challenged by the State of Argentina, the statutory time-limits to file a complaint appeal with the chambers of the Federal Supreme Court were, in this case, five days plus seven days of extension because of the 1,477 kilometers distance between the city of Rawson, capital of the province of Chubut and domicile of Mr. Pacheco's defense attorney, and the headquarters of the Supreme Court of Justice in the country's federal capital.⁷

27. In this regard, the IACHR points out that the ruling of the Superior Court of Justice of Chubut to dismiss the special federal appeal was notified to the petitioners on July 3, 2003 and that, on July 18, 2003, that is, within the time-limits of 12 business days stemming from the calculation provided for by Article 158 of the Federal Code of Civil and Commercial Procedures, the attorneys of the petitioners sent, by regular mail, the

² IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12.

³ IACHR, Report No. 39/09, Petition 717-00. Inadmissibility. Tomás Eduardo Jiménez Villada. Argentina. March 27, 2009, para. 59.

⁴ IACHR, Report No. 90/03, Petition 0581/1999. Inadmissibility. Gustavo Trujillo González. Peru. October 22, 2003, para. 32.

⁵ **ANNEX 1.** Complaint appeal challenging dismissal of special federal appeal filed by Arnaldo Hugo Barone, Public Defender of the province of Chubut acting as legal representative of Diego Armando Pacheco. Annex 14 to the communication from the petitioners, received by the Commission on May 21, 2004.

⁶ IACHR, Report No. 135/18, Petition 1045-07. Inadmissibility. Enrique Alberto Elías Waiman. Argentina. November 20, 2018, paras. 9 and 10.

⁷ Federal Supreme Court of Justice. Agreement 5/2010. Table of geographical distances between the Federal Capital and federal branches. Accessible at: <https://www.argentina.gob.ar/normativa/nacional/acordada-5-2010-165599/texto>

complaint appeal challenging the dismissal of the special federal appeal to the headquarters of the Supreme Court of Justice.

28. The Commission has no information about the date on which the notice of the complaint appeal was received at the Supreme Court's reception desk. Of greater relevance, however, the Commission underscores that the Supreme Court's judgment ruling that the appeal was "past the statutory time-limits" is entirely without grounds, a circumstance making it impossible to ascertain the time the court took into consideration in order to assess compliance with the statutory time-limits for filing, in other words, the day on which the attorneys posted the notice in the mail in Rawson or the day on which said notice reached the reception desk of the Supreme Court in Buenos Aires. Nor is it possible to ascertain the time-limits taken into consideration by the Supreme Court in order to rule that the appeal was barred because of statutory time-limits and whether or not consideration was given to extending the time-limits for its filing because of the geographical distance between the city of Rawson and that of Buenos Aires, in accordance with Article 158 of the Federal Code of Civil and Commercial Procedures. The Commission notes that the judgment of the Supreme Court only refers to Article 285 of the Federal Code of Civil and Commercial Procedures and makes no mention of any extension of the time-limits as appearing in Article 158 of the same legal text.

29. Finally, it should be highlighted here that the state of Argentina, during the processing of the petition in the Commission, did not provide any clear explanations about this matter and confined itself to indicating that, if the Supreme Court had not taken into account the additional time-limits granted by Article 158, then the attorneys of the petitioner should have challenged said ruling by filing an appeal for reversal.

30. With this in mind, the IACHR understands that the petitioners made all efforts possible to reach a settlement of the dispute under domestic law and that, as a result of that effort, they duly exhausted ordinary and extraordinary remedies as provided for by domestic law. As a result, the Commission shall conclude that, as of the moment the notice filing the complaint appeal challenging dismissal of the special federal appeal was dispatched via the postal service to the reception desks of the Supreme Court of Justice, the petitioners met the requirement stipulated in Article 46(1) of the American Convention.⁸

ii) Failure to exhaust remedies under domestic law because of the failure to file an appeal for reversal with the Federal Supreme Court of Justice

31. In connection with the state's allegation about the failure to exhaust remedies under domestic law for the failure to file an appeal for reversal to challenge the dismissal of the complaint appeal, the Commission notes that, according to the Code of Civil and Commercial Procedures applicable in the present proceeding, said appeal for reversal is admissible only against simple motions so that the judge or court that has issued the ruling can overturn them for being contrary to the rule of law.⁹ The same law describes simple motions as those court rulings that "only affect, without grounds, the development of the proceeding or order actions merely for execution..."¹⁰

32. The Commission takes note of what was reported by the state's representative in its communication of March 13, 2019 in which it provides a couple of precedents of the Federal Supreme Court of Justice where the court rules in favor of the appeal for reversal filed against the decision of the same court to declare that the complaint appeal was inadmissible without taking into account an extension of the time-limits for submittal because of the distance.

33. Nevertheless, the Commission underscores that, in the second precedent mentioned, the Federal Supreme Court established that "as a rule, decisions of the present Court are not subject to reversal (Judgments: 302:1319; 310:2134; 326:4351, among many others), in the present case an exceptional assumption appears

⁸ IACHR, Report No. 56/08, Petition 11.602. Admissibility. Workers dismissed from Petróleos del Perú (Petroperú) Northwest-Talara Area. Peru. July 24, 2008, para. 58.

⁹ Code of Civil and Commercial Procedures, Article 238.

¹⁰ Code of Civil and Commercial Procedures, Article 160.

authorizing nonobservance of that principle.” As a result, the IACHR understands that, on the basis of the sentences referred in the above-mentioned precedent, there is Supreme Court jurisprudence that dismisses the admissibility of the appeal for reversal of final or interlocutory rulings such as those, for example, that dismiss complaint appeals challenging the dismissal of an special federal appeal.

34. Bearing in mind the status of Supreme Court jurisprudence on the subject and especially taking into consideration the standard-setting regulation governing the appeal for reversal in the Code of Civil and Commercial Procedures applicable to the case and the fact that it involves an extraordinary appeal, the Commission deems that the stipulation of exhaustion of the remedy for reversal is not enforceable in order to evaluate compliance with the requirement of Article 46(1)(a) of the American Convention.¹¹

iii) Filing past statutory limits on the “federal matter”

35. Regarding this matter, the state contended that the petitioners did not submit on a timely basis the matter of the alleged violation of the right to secure a full review of the judgment, as a result of which national judicial bodies were not provided the opportunity to examine and eventually remedy said violation.

36. Regarding this, the Commission observes that both the cassation appeal filed by the Family Counsellor and Guardian Ad Litem on behalf of Mr. Pacheco¹² and the appeal filed by the Assistant Attorney of the Office of the Public Defense Office of the Chamber¹³ against the judgment of conviction of September 17, 2002, include in their text a series of allegations aimed at challenging the decision to give the petitioner a prison sentence, because a measure of that nature violated the human rights of juvenile offenders and the rehabilitation purpose of the sentence. The appeals also alleged that the judgment of conviction was arbitrary and infringed due process of law and the right to be defended in a trial.

37. The Commission notes that both appeals were ruled “inadmissible” by the Superior Court of Justice of the Province of Chubut (see para. 24 above).¹⁴ In view of this decision, the Public Defender of the province of Chubut filed an special federal appeal.¹⁵ The Commission underscores that it was on that occasion and as a direct consequence of the Superior Court’s ruling that Mr. Pacheco’s attorneys referred, for the first time, to the violation of the right to a second hearing of the case as enshrined in both the Constitution and the American Convention, with the expectation that the Federal Supreme Court of Justice would examine their allegations and eventually overturn what had been ruled in the lower courts.

38. As a result, the Commission understands that the matters in connection with a possible violation of Article 8(2)(h) of the Convention were filed by the petitioners within the time-limits stipulated and that the state did have the opportunity to remedy them in the framework of a judicial proceeding under domestic law before they were heard by bodies of the inter-American human rights system. Therefore, the Commission deems that the petition does meet the requirements for admissibility as stipulated by the American Convention.¹⁶

C. Time-limits for filing the petition

¹¹ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada De Saavedra. Peru. February 24, 2018, para. 12.

¹² **ANNEX 2.** Cassation appeal filed by María Isabel Díaz de Fajardo, court-appointed Family Counselor and Guardian Ad Litem, on behalf of Diego Armando Pacheco, received by the First Chamber of the Criminal Court on September 26, 2002. Annex 2 to the communication from the petitioners, received by the Commission on May 21, 2004.

¹³ **ANNEX 3.** Cassation appeal filed by Esteban Mantecón, Assistant Attorney of the Public Defense Office of the Chamber, providing technical assistance to Diego Armando Pacheco, received by the First Chamber of the Criminal Court on October 2, 2002. Annex 3 to the communication from the petitioners, received by the Commission on May 21, 2004.

¹⁴ **ANNEX 4.** Judgment of the Superior Court of Justice of the province of Chubut of December 16, 2002. Annex 6 to the communication from the petitioners, received by the Commission on May 21, 2004.

¹⁵ **ANNEX 5.** Special federal appeal filed by Arnaldo Hugo Barone, Public Defender of the province of Chubut, on behalf of Diego Armando Pacheco. Annex 8 to the communication from the petitioners, received by the Commission on May 21, 2004.

¹⁶ IACHR, Report No. 75/14, Petition 1018-08. Admissibility. Ronald Moya Chacón and Freddy Parrales Chaves. Costa Rica. August 15, 2014, para. 32.

39. The Commission observes that, in this case, the delay of six months required by Article 46(1)(b) of the Convention must be assessed in the light of the notification of judgment made by the Federal Supreme Court of Justice on November 11, 2003, whereby the complaint appeal filed by attorneys of the alleged victim was dismissed. The situation was such that, although it was an appeal of an extraordinary nature, said body did lead the petitioners to reasonably expect a favorable outcome.¹⁷

40. Regarding the date of notification of the Supreme Court's ruling, the Commission stresses that it was provided on November 13, 2003 by means of notification bulletin 55637/03.¹⁸ The IACHR also notes that the petitioners sent their complaint by the postal service and that it was received in the Commission's offices on May 12, 2004. As a result, the Commission concludes that the petitioner did meet the six-month period stipulated by Article 46(1)(b) of the Convention.¹⁹

D. Characterization of the facts alleged

41. The Commission considers that, if proven, the facts described by the petitioners would tend to establish a violation of the rights enshrined in Articles 7, 8(2)(h), 9, and 19 of the American Convention in connection with its Articles 1.1 and 2, to the detriment of Diego Armando Pacheco.

IV. DETERMINATIONS OF FACTS

A. Criminal proceedings against the petitioner

42. On May 19, 2000, the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia issued a judgment in the criminal proceedings filed against the alleged victim for the crime of manslaughter. In said judgment, the Court ruled "the criminal responsibility of the juvenile Diego Armando Pacheco in accordance with the criminal system for juveniles (Articles 2,²⁰ 48(1),²¹ and cc Law 22.278, t.o. 22.803) bearing in mind that, at the time of the incident, he was seventeen years old."²² In the same ruling, the Court ordered

¹⁷ Regarding this, the IACHR has indicated that, "although in a case like the present, in principle, it may suffice that the alleged victim exhaust ordinary remedies, if they exhaust special remedies in the reasonable expectation that they will obtain a favorable result, then these should be deemed as validly exhausted remedies when determining the petition's compliance with the admissibility requirements." IACHR, Report No. 58/18. Admissibility. Rómulo Rubén Palma Rodríguez. Peru. May 5, 2018, para. 15; and IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 17.

¹⁸ **ANNEX 6.** Notification bulletin 55637/03 signed by the court usher of the Federal Supreme Court of Justice. Annex 2 to the communication from the petitioners, August 4, 2009.

¹⁹ IACHR, Report No. 173/17, Petition 1111-08. Admissibility. Marcela Brenda Iglesias, Nora Ester Ribaldo and Eduardo Rubén Iglesias. Argentina. December 29, 2017, para. 8.

²⁰ **ARTICLE 2:** A minor between the ages of sixteen (16) and eighteen (18) who commits any of the crimes not listed in Article 1 is punishable. In such cases, the judicial authority shall prosecute accordingly, and shall order a provisional custodial arrangement for the minor during prosecution of the case so that the powers granted by Article 4 may be exercised. Whatever the result of the proceedings, if the studies that are carried out reveal that the minor has been abandoned, is without assistance, in physical or moral danger, or has behavioral problems, the judge shall take charge of him definitively by a court order, following a hearing with the parents, tutor or guardian.

²¹ **ARTICLE 4:** The following conditions must be present in order to impose punishment in the case of a juvenile offender between the ages of 16 and 18 referred to in Article 2:

1. The person's criminal culpability—and civil liability if there is any—must be previously established according to the rules governing procedure.

2. The person concerned must be eighteen (18) years of age.

3. The person must have undergone a period of remedial custodial treatment for a period of not less than one (1) year, which period may be extended if necessary until the person reaches the age of majority. Once these requirements have been met, if the nature of the crime, the minor's background, the result of the remedial custodial treatment and the direct impression made on the judge are such that punishment is deemed necessary, then it shall be so resolved; the penalty may be reduced to the penalty dictated for attempts to commit the same crime. Otherwise, if punishment is not deemed necessary, the minor shall be acquitted, in which case the requirement set forth in the second subparagraph may be disregarded.

²² **ANNEX 7.** Judgment No. 17/2002 of the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia of May 19, 2000. Annex 3 to the communication from the petitioners, August 4, 2009.

that “Diego Armando Pacheco be subject to remedial custodial treatment until he reached legal age under the supervision of the court-appointed Family Counsellor and Guardian Ad Litem...”²³

43. Afterwards, on September 17, 2002, the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia unanimously decided to sentence Diego Armando Pacheco to four years prison, court costs, and legal expenses for the crime of manslaughter, for which he was held culpable on the basis of the judgment of May 19, 2000. To substantiate their ruling, the judges claimed compliance with “all of the requirements stipulated in Article 4 of Law 22.278 and, in addition to that, the following were evaluated: the offense that gave rise to the ruling of culpability, the juvenile’s past record, his personal circumstances, the outcome of the remedial custodial treatment, and the direct impression made on the judge.”²⁴

44. Concretely, in the vote of one of the judges—which essentially agrees with the conclusions reached by his two colleagues—it was argued that “in connection with the modality of the imputed incident, it is not possible to neglect consideration of the fact that it was a very serious action because it led to the death of a peer in circumstances involving a gathering of various persons and then ingesting large amounts of liquor [...] As for the direct impression gathered, I must stress that I did not see that the incident had been internalized although the juvenile had mentioned that he had spoken to the victim’s next of kin, even asking them for forgiveness, without any evidence of concern or taking up responsibility for his action.”²⁵

45. Finally, with respect to the remedial custodial treatment ordered by the judgment of criminal culpability, the judges contended that, according to “the reports incorporated into the proceedings by reading in the course of the hearing it cannot be said that it yielded a positive outcome. Of course there were difficulties that hampered its normal development such as the circumstance of having been deprived of liberty for almost a year or other operational difficulties such as the absence of resources to transport the juvenile to undergo his psychological therapy, but the discontinuity that was evident on the basis of the information provided is not entirely disconnected from the juvenile himself, who has been recalcitrant to the psychotherapy, did not attend school for adults, and always had to be urged to follow the rules that were given to him....”²⁶

B. Remedies filed against the judgment of culpability and sentencing tailored to the individual

46. In view of the ruling mentioned in the paragraphs above, the court-appointed Family Counsellor and Guardian Ad Litem filed, on September 26, 2002, a cassation appeal for the benefit of Diego Armando Pacheco.²⁷ Likewise, the petitioner’s official defense attorney also filed a cassation appeal challenging the conviction issued against the defendant.²⁸ Both appeals substantiated their motion on the basis of the erroneous application of substantive criminal law. In the first appeal, the court-appointed Family Counsellor and Guardian Ad Litem contended that “the Court has not conducted a detailed review of the remedial custodial treatment in itself, the difficulties that arose, or the personal and cultural characteristics of my ward, arbitrarily failing to abide by the principles of statutes currently in force...”²⁹ As for the official defense attorney, he stated in his brief that “the Court has erroneously applied substantive law when convicting Diego Armando Pacheco to four

²³ ANNEX 7. Judgment No. 17/2002 of the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia of May 19, 2000. Annex 3 to the communication from the petitioners, August 4, 2009.

²⁴ ANNEX 8. Judgment No. 50/2002 of the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia of September 17, 2002. Annex 1 to the communication from the petitioners, received by the Commission on May 21, 2004.

²⁵ ANNEX 8. Judgment No. 50/2002 of the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia of September 17, 2002. Annex 1 to the communication from the petitioners, received by the Commission on May 21, 2004.

²⁶ ANNEX 8. Judgment No. 50/2002 of the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia of September 17, 2002. Annex 1 to the communication from the petitioners, received by the Commission on May 21, 2004.

²⁷ ANNEX 2. Cassation appeal filed by María Isabel Díaz de Fajardo, court-appointed Family Counsellor and Guardian Ad Litem, on behalf of Diego Armando Pacheco, received by the First Chamber of the Criminal Court on September 26, 2002. Annex 2 to the communication from the petitioners, received by the Commission on May 21, 2004.

²⁸ ANNEX 3. Cassation appeal filed by Esteban Mantecón, Assistant Attorney of the Public Defense Office of the Chamber, received by the First Chamber of the Criminal Court on October 2, 2002. Annex 3 to the communication from the petitioners, received by the Commission on May 21, 2004.

²⁹ ANNEX 2. Cassation appeal filed by María Isabel Díaz de Fajardo, court-appointed Family Counsellor and Guardian Ad Litem, on behalf of Diego Armando Pacheco, received by the First Chamber of the Criminal Court on September 26, 2002. Annex 2 to the communication from the petitioners, received by the Commission on May 21, 2004.

years prison, without previously exhausting measures within its reach, that is, alternative measures or sentences [...] who, at the time of the imputed incident, was 17 years of age.”³⁰

47. On October 3, 2002, the First Chamber of the Criminal Court admitted both appeals without taking into consideration the merits of the case and remitted the proceedings to the Superior Court of Justice of the province of Chubut.³¹ Nevertheless, by means of the judgment of December 16, 2002, the Superior Court of Justice ruled that the cassation appeals that had been filed were “inadmissible.” To substantiate its ruling, the Superior Court stated that “the judges in the debate are sovereign in their application of the circumstances referred to in the Criminal System for Juveniles, Law 22.278, Article 4, second subparagraph and *in fine* and in the Criminal Code, Articles 40 and 41, unless absurdity is alleged and proven when weighing the considerations or that the judges either exceeded the range of penalties set for the crime or distorted the nature or scope of those penalties.”³²

48. In view of this decision, the Public Defender of the province of Chubut, on behalf of Diego Armando Pacheco, filed, on February 3, 2003, the special federal appeal provided for in Article 14 of Law 48 on the grounds of the arbitrariness of the judgment. In this brief, the Public Defender alleged a violation of the rights of the person he was defending to a second review of his trial, the right to defense and due process of law. Likewise, the appeal reiterated that the grounds for the arbitrary conviction of Mr. Pacheco was that he had not completed his remedial custodial treatment.³³

49. This appeal was dismissed by the Superior Court of Justice of the province of Chubut by the judgment of June 30, 2003, because, according to the court, it was not proven “that the ruling being challenged had upheld a judgment stemming from an illegitimate trial or that the evidence was examined arbitrarily or that it was undermined by a defect in the substantive statutes that were applied,” situations that would have justified the intervention of the Federal Supreme Court of Justice.³⁴

50. Thereafter, the Public Defender of the province of Chubut filed with the Supreme Court of Justice a complaint appeal challenging the dismissal of the special federal appeal against the judgment of the Superior Court of Justice of June 30, 2003. In said document, the petitioner’s representative reiterated the considerations set forth in his special federal appeal and asserted that the Superior Court of Justice of Chubut arbitrarily restricted the framework of the cassation appeal when ruling that the cassation appeals filed in due time and form were inadmissible, which in turn had undermined, according to him, the right to defense by trial and to due process of law. Regarding the conviction of Mr. Pacheco, the Official Defense Attorney contended that “the circumstance of sentencing my client on the grounds of his alleged misconduct in completing the remedial custodial treatment, is fallacious, thus leading to the judgment, on the basis of apparent grounds devoid of factual substantiation....”³⁵

51. Finally, the Federal Supreme Court of Justice, by means of the judgment of November 11, 2003, decided to dismiss the complaint filed by Mr. Pacheco’s defense attorney because of the special federal appeal that was turned down because, according to the court, it had been filed past statutory time-limits according to Article

³⁰ ANNEX 3. Cassation appeal filed by Esteban Mantecón, Assistant Attorney of the Public Defense Office of the Chamber, received by the First Chamber of the Criminal Court on October 2, 2002. Annex 3 to the communication from the petitioners, received by the Commission on May 21, 2004.

³¹ ANNEX 9. Ruling of the First Chamber of the Criminal Court of Comodoro Rivadavia of October 3, 2002. Annex 4 to the communication from the petitioners, received by the Commission on May 21, 2004.

³² ANNEX 4. Judgment of the Superior Court of Justice of the Province of Chubut of December 16, 2002. Annex 6 to the communication from the petitioners, received by the Commission on May 21, 2004.

³³ ANNEX 5. Special federal appeal filed by Arnaldo Hugo Barone, Public Defender of the province of Chubut on behalf of Diego Armando Pacheco. Annex 8 to the communication from the petitioners, received by the Commission on May 21, 2004.

³⁴ ANNEX 10. Judgment of the Superior Court of Justice of the Province of Chubut of June 30, 2003. 2003. Annex 12 to the communication from the petitioners, received by the Commission on May 21, 2004.

³⁵ ANNEX 11. Complaint appeal challenging the dismissal of the special federal appeal filed by Arnaldo Hugo Barone, Public Defender of the province of Chubut, on behalf of Diego Armando Pacheco. Annex 14 to the communication from the petitioners, received by the Commission on May 21, 2004.

285 of the Federal Code of Civil and Criminal Procedures.³⁶ According to what was claimed by the state in the processing of the present petition, the ruling of the Federal Supreme Court of Justice was notified to the appellant on November 13, 2003.³⁷

V. ANALYSIS OF LAW

A. Right to appeal the judgment to a higher court (Article 8(2)(h) of the American Convention on Human Rights, in connection with Articles 1(1) and 2 of the same instrument)

i) General considerations on the right to appeal a judgment

52. The right to appeal a judgment before a different and higher judge or court is one of the minimum guarantees to which every person subject to criminal investigation and proceedings is entitled. Its purpose is to ensure the re-examination of an adverse judgment so as to provide the opportunity for redressing judicial rulings contrary to law and to prevent an unfair ruling from becoming *res judicata*.³⁸

53. In that regard, the Commission underscores that the right to appeal the judgment must be interpreted in conjunction with other procedural guarantees, should the characteristics of the case so require. By way of example, it must be mentioned that there is a close connection between the right to appeal the judgment, on the one hand, and the duty to ensure access to a duly reasoned judgment by the judges, on the other hand. Also of particular relevance is the connection between the rights to appeal and defense in a trial enshrined in Article 8 of the American Convention and the right to personal liberty enshrined in Article 7 of the same treaty.³⁹

54. The Inter-American Court has established that “the failure to guarantee the right to appeal the judgment prevents the exercise of the right to defense which is protected through this mechanism and implies the lack of protection of other basic guarantees of due process that must be assured to the appellant.”⁴⁰ Therefore, due process of law would not be possible unless the state guarantees the adequate exercise of the right to defense in a trial and, in particular, ensures that the person involved in a criminal proceeding is provided the opportunity to counteract a judgment of conviction by initiating proceedings to challenge the ruling.⁴¹

55. The Inter-American Court has also contended that “[t]he right to review by a higher court, expressed by means of the complete review of the conviction, ratifies the grounds and provides more credibility to the judicial acts of the State and, at the same time, offers more security and protection to the rights of the accused.”⁴²

56. For international human rights law, the label or name used to designate this appeal is irrelevant.⁴³ What is important is for the remedy set forth under domestic law to comply with a series of standards. First of all,

³⁶ ANNEX 12. Judgment of the Federal Supreme Court of Justice of November 11, 2003. Annex 1 to the communication from the petitioners, August 4, 2009.

³⁷ Communication from the state of Argentina, July 27, 2015.

³⁸ I/A Court H.R. Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Preliminary objections, merits, reparations and costs. Series C No. 107, paras. 158 to 161; and I/A Court H.R. Case of Mendoza et al. v. Argentina. Judgment of May 14, 2013. Preliminary objections, merits and reparations. Series C No. 260, para. 242.

³⁹ IACHR. Report No. 33/14. Case 12.820. Merits. Manfred Amrhein et al. Costa Rica. April 4, 2014, para 197. See also: UN, Human Rights Committee. General Comment No. 32, “Article 14, Right to equality before courts and tribunals and to fair trial.” 2007, paras. 47 to 50.

⁴⁰ I/A Court H.R. Case of Mohamed v. Argentina. Judgment of November 23, 2012. Preliminary objection, merits, reparations and costs. Series C No. 255, para. 119.

⁴¹ I/A Court H.R. Case of Amrhein et al. v. Costa Rica. Judgment of April 25, 2018. Preliminary objections, merits, reparations and costs. Series C No. 354, para. 186.

⁴² I/A Court H.R. Case of Barreto Leiva v. Venezuela. Judgment of November 17, 2009. Merits, reparations and costs. Series C No. 206, para. 89; I/A Court H.R. Case of Mohamed v. Argentina. Judgment of November 23, 2012. Preliminary objection, merits, reparations and costs. Series C No. 255, para. 97; and I/A Court H.R. Case of Liakat Ali Alibux v. Suriname. Judgment of January 30, 2014. Preliminary objections, merits, reparations and costs. Series C No. 276, para. 85.

⁴³ I/A Court H.R. Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Preliminary objections, merits, reparations and costs. Series C No. 107, para. 165; and UN, Human Rights Committee. Gómez Vázquez v. Spain. Communication No. 701/1996. Views adopted on 11 August 2000, para. 11.1.

the remedy must be timely, which means that it must be able to be filed before the judgment becomes *res judicata*, and it must also be heard and settled within a reasonable period of time.⁴⁴

57. Second, the remedy must be accessible, that is, filing it should not “involve great complexities that render this right illusory.”⁴⁵ In that respect, the Inter-American Court has established that states must refrain from including in their procedural laws “restrictions or requirements inimical to the very essence of the right to appeal a judgment”⁴⁶ and that the formalities required for the appeal to be admitted “should be minimal and should not constitute an obstacle to the remedy fulfilling its purpose of examining and resolving grievances argued by the appellant.”⁴⁷

58. In that respect, the Commission considers that, in principle, regulation of some of the minimum requirements for an appeal to be admissible is not incompatible with the right set forth in Article 8(2)(h) of the Convention. Some of these minimum requirements are, for example, the actual submission of the appeal—given that Article 8(2)(h) does not require automatic review—or the regulation of a reasonable period of time within which the filing of the appeal must be submitted. However, in certain circumstances, dismissal of the appeals based on the failure to meet procedural requirements of form, either established under the law or shaped by practices of the court, may result in a violation of the right to appeal the judgment.⁴⁸

59. Furthermore, it should be understood that, regardless of the regimen or system of appeals adopted by states, in order for the remedy that is available to be effective, its formal provision in procedural law is not sufficient, “it must constitute an appropriate means for attempting to correct a wrongful conviction.”⁴⁹

60. Finally, the remedy must allow a comprehensive examination or review of the judgment being challenged. Regarding this the Inter-American Court has stressed that permission must be given to analyze “the factual, probative and legal issues on which the contested judgment was based because, in jurisdictional activities, the determination of the facts and the application of the law are interdependent, so that an erroneous determination of the facts entails an erroneous or inappropriate application of the law.”⁵⁰

61. Regarding this item, the Inter-American Commission indicated the following in the case of *Abella versus Argentina*:

Article 8(2)(h) refers to the minimum characteristics of a remedy that serves as a check to ensure a proper ruling in both substantive and formal terms. From the formal standpoint the right to appeal the judgment to a higher court to which the American Convention refers should, in the first place, apply [...] with the purpose of examining the unlawful application, the lack of application, or the erroneous interpretation of rules of law based on the operative part of the judgment. The Commission also considers that to guarantee the full right of defense, this remedy should include a material review of the interpretation of procedural rules that may have influenced the decision in the case when there has been an incurable

⁴⁴ I/A Court H.R. Case of *Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Preliminary objections, merits, reparations and costs. Series C No. 107, para. 158; and I/A Court H.R. Case of *Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Judgment of May 29, 2014. Merits, reparations and costs. Series C No. 279, para. 270.

⁴⁵ I/A Court H.R. Case of *Mohamed v. Argentina*. Judgment of November 23, 2012. Preliminary objection, merits, reparations and costs. Series C No. 255, para. 99.

⁴⁶ I/A Court H.R. Case of *Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Preliminary objections, merits, reparations and costs. Series C No. 107, para. 161; and I/A Court H.R. Case of *Liakat Ali Alibux v. Suriname*. Judgment of January 30, 2014. Preliminary objections, merits, reparations and costs. Series C No. 276, para. 94.

⁴⁷ I/A Court H.R. Case of *Mohamed v. Argentina*. Judgment of November 23, 2012. Preliminary objection, merits, reparations and costs. Series C No. 255, para. 99; and I/A Court H.R. Case of *Norín Catrimán et al. (Leaders, members and activists of the Mapuche Indigenous People) v. Chile*. Judgment of May 29, 2014. Merits, reparations and costs. Series C No. 279, para. 270.

⁴⁸ I/A Court H.R. Case of *Amrhein et al. v. Costa Rica*. Judgment of April 25, 2018. Preliminary objections, merits, reparations and costs. Series C No. 354, para. 196.

⁴⁹ I/A Court H.R. Case of *Mohamed v. Argentina*. Judgment of November 23, 2012. Preliminary objection, merits, reparations and costs. Series C No. 255, para. 100.

⁵⁰ I/A Court H.R. Case of *Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Judgment of May 29, 2014. Merits, reparations and costs. Series C No. 279, para. 270(d).

nullity or where the right to defense was rendered ineffective, and also with respect to the interpretation of the rules on the weighing of evidence, whenever they have led to an erroneous application or non-application of those rules.⁵¹

62. In the same regard, the United Nations Human Rights Committee, which is in charge of monitoring the International Covenant on Civil and Political Rights (ICCPR) and its compliance by states that have ratified it,⁵² has repeatedly established that:

“the right of everybody to appeal a judgment of conviction and related sentence before a higher judicial instance [...] imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case. A review confined to the merely formal or legal aspects of the conviction falls short of the requirements of the Covenant.”⁵³

63. The IACHR has also stressed that the right to appeal does not necessarily entail a new trial or a new hearing, as long as the court conducting the review is not prevented from examining the facts of the case. What is necessary, in the light of Article 8(2)(h) of the Convention, is that there is the possibility of highlighting and securing responses to errors that might have been made by the lower-court judge or instance. This means that it is not possible to exclude from the proceeding of the appeal certain categories such as facts, how evidence was incorporated into the proceedings, and how the lower-court judges assessed that evidence. The form and means whereby the review was conducted shall depend on the nature of the questions being debated, as well as on the specificities of the criminal proceedings system of the respective states.⁵⁴

64. The Commission also believes it is advisable to highlight that the right to appeal a judgment is also enshrined in the Convention on the Rights of the Child. In particular, Article 40(2)(b)(v) points out the following: “Every child alleged as or accused of having infringed the penal law has at least the following guarantees: [...] to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law.”⁵⁵ The Commission stresses that the Republic of Argentina ratified said Convention in 1990 and that, in 1994, it acquired constitutional status.

65. The Commission observes that the Committee on the Rights of the Child has interpreted that, according to that provision, “[t]he child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body, in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance.”⁵⁶ Likewise, the Committee has deemed that this right of appeal “is not limited to the most serious offenses.”⁵⁷ Therefore, the Commission deems that the right to appeal a judgment becomes especially relevant

⁵¹ IACHR. Report No. 55/97. Case 11.137. Merits. Juan Carlos Abella. Argentina. November 18, 1997, para. 261.

⁵² The wording of Article 14(5) of ICCPR is substantively similar to that of Article 8(2)(h) of the American Convention; therefore, interpretations by the UN Human Rights Committee of the contents and scope of said article are relevant as a guideline for the interpretation of Article 8(2)(h) of the American Convention.

⁵³ UN, Human Rights Committee. *Aliboeva v. Tajikistan*, Communication No. 985/2001, Views adopted on 18 October 2005; *Khalilova v. Tajikistan*, Communication No. 973/2001, Views adopted on 30 March 2005; *Domukovsky and al. v. Georgia*, Communications No. 623-627/1995, Views adopted on 6 April 1998; and *Saidova v. Tajikistan*, Communication No. 964/2001, Views adopted on 8 July 2004.

⁵⁴ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al. (Juveniles sentenced to life time imprisonment), Argentina, November 2, 2010, para. 189.

⁵⁵ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force: 2 September 1990, in accordance with Article 49. New York, 20 November 1989. Article 40(2)(b)(v).

⁵⁶ United Nations. Committee on the Rights of the Child. General Comment No. 10. Children’s rights in juvenile justice. CRC/C/GC/10. 25 April 2007, para. 60.

⁵⁷ United Nations. Committee on the Rights of the Child. General Comment No. 10. Children’s rights in juvenile justice. CRC/C/GC/10. 25 April 2007, para. 60.

when determining the rights of children and adolescents, especially when they have been sentenced to imprisonment for the perpetration of offenses.⁵⁸

66. Finally, the Commission has constantly understood that ascertainment of whether or not the right to appeal a judgment has been violated requires a case-by-case analysis whereby the concrete circumstances of the situation being heard are assessed, taking as a parameter the general standards outlined in the preceding paragraphs.

ii) Analysis of the case

67. In the instant case, the Commission stresses that, first of all, the petitioner—who was 17 years of age at the time of the incident—was subject to trial in accordance with the provisions of Law 22.278 of the Criminal System for Juveniles. As a result of this trial, Mr. Pacheco was judged “criminally responsible for the crime of manslaughter” by means of the judgment of May 19, 2000, issued by the First Chamber of the Criminal Court of Comodoro Rivadavia. On September 17, 2002, the same court also sentenced the petitioner to four years prison when confirming that, according to the opinion of the judges, the requirements stipulated in Article 4 of Law 22.278 had been met.

68. In view of this judgment, the petitioner’s defense attorneys filed two cassation appeals with the Superior Court of Justice of the province of Chubut. The Commission stresses that, in accordance with the system of criminal procedures in force in the province of Chubut at the time of the trial, the admissibility of said cassation appeal depended exclusively on the grounds of “failure to abide by, or erroneous application of substantive law” or “failure to observe the norms that the present Code establishes, leading to inadmissibility, expiry, or annulment, as long as, except for cases of absolute nullification, the complainant has called for the redress of the error within statutory time-limits, if possible, or filed a protest with a cassation appeal.”⁵⁹

69. The Commission also stresses that the Superior Court of Justice of the province of Chubut, by means of the judgment of December 16, 2002, decided to rule that both cassation appeals were “inadmissible” and did not begin examining the challenges being made in said appeals. The Commission notes that, in the above-mentioned ruling, the court confined its argument to stating that “the judges in the debate are sovereign in their application of the circumstances referred to in the Criminal System for Juveniles, Law 22.278, Article 4, second subparagraph and *in fine* and in the Criminal Code, Articles 40 and 41, unless absurdity is alleged and proven when weighing the considerations or that the judges either exceeded the range of penalties set for the crime or distorted the nature or scope of those penalties. The cassation appeal motion is not admissible because there is no objective criterion to determine the attitude that the judge must adopt regarding the appraisal of said factual matters.”⁶⁰

70. The Commission understands that the statutory limitation currently in force in the Code of Criminal Procedures of Chubut for the admissibility of a cassation appeal filed against a judgment of conviction at the time of incident made it impossible, in this concrete case, for Mr. Pacheco to exercise his right to a comprehensive review of the judicial ruling issued by the court of first instance.⁶¹

71. It is not the duty of IACHR to determine the possible questions that could have been asked in the instant case if the constraining factors had not been applied. The IACHR has indicated that “it is enough to determine that the alleged victims launched the appeal stage with a statutory limitation regarding the allegations that

⁵⁸ I/A Court H.R. Case of Mendoza et al. v. Argentina. Judgment of May 14, 2013. Preliminary objections, merits and reparations. Series C No. 260, para. 247.

⁵⁹ ANNEX 13. Code of Criminal Procedures of the province of Chubut, Law 3155, Article 415. Annex 17 to the communication from the petitioners, received by the Commission on May 21, 2004.

⁶⁰ ANNEX 4. Judgment of the Superior Court of Justice of the Province of Chubut of December 16, 2002. Annex 6 to the communication from the petitioners, received by the Commission on May 21, 2004.

⁶¹ I/A Court H.R. Case of Castillo Petruzzi et al. v. Peru. Judgment of May 30, 1999. Merits, reparations and costs, para. 161; and I/A Court H.R. Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Preliminary objections, merits, reparations and costs, paras. 157 to 168.

could be filed (...). This exclusion, in itself, is incompatible with the broad scope of the appeal envisaged in Article 8(2)(h) of the American Convention.” In any case, the limited scope of the cassation appeal was reflected in the way in which said appeals were ruled on in the concrete case.

72. Finally, the IACHR notes that the allegations made by Mr. Pacheco’s defense attorneys regarding a possible violation of the right to a comprehensive review of the judgment of conviction were not examined by the Federal Supreme Court of Justice, because this court had ruled that the special federal appeal was “inadmissible.” Without detriment to the above, the Commission deems that the limitations sustained by the alleged victim in connection with the reasons for the admissibility of the cassation appeal could not, in principle, have been resolved by filing the special federal appeal, which, in turn, also involved specific limitations in terms of admissibility for the discussion of factual matters, as set forth in Article 14 of Law 48.⁶²

73. Finally, the Commission understands that, subsequent to the judgment of the Superior Court of Justice of the province of Chubut, the system of criminal procedures of the province underwent changes that, in principle, would ensure that those who were parties to a criminal proceeding would be entitled to secure a comprehensive and exhaustive review of the ruling of the first instance.⁶³ The IACHR also notes that, at the federal level, there has been a series of jurisprudence pronouncements and, more recently, legislative reforms that also pursued the creation of a broad and accessible remedy in order to ensure the comprehensive review of the sentence being appealed.⁶⁴ Nevertheless, the Commission understands that, in the instant case, said reforms did not in any way change the procedural status of the petitioner because, by the time they were implemented, the judgment against Mr. Pacheco had become *res judicata*. As a result, the Commission concludes that the violation of the right to appeal the judgment of conviction sustained by the petitioner has not been adequately or comprehensively redressed by the state of Argentina.

74. By virtue of the above considerations, the IACHR concludes that Mr. Pacheco did not benefit from an appeal before the hierarchical authority that would have conducted a comprehensive review of the conviction issued against him, including matters of fact, law, appraisal of evidence, and due process of law as alleged by the defense attorneys in the cassation appeal. In that regard, the Commission concludes that the state of Argentina violated the right to appeal the judgment as set forth in Article 8(2)(h) of the American Convention, in connection with Articles 1(1) and 2 of the same instrument. The IACHR also understands that, as a result of the limited nature of the cassation appeal, the victim did not benefit from any simple and effective judicial remedies in the framework of the criminal proceedings that led to his conviction, also in violation of the right set forth in Article 25(1) of the Convention, in connection with the obligations of Articles 1(1) and 2 of the same instrument.

B. Right to personal liberty, rights of the child, and principle of legality (Articles 7, 19, and 9 of the American Convention on Human Rights, in connection with Articles 1(1) and 2 of the same treaty)

i) General considerations about the right to personal liberty, the prohibition of deprivation of liberty and arbitrary incarceration, and the principle of legality

75. The American Convention on Human Rights enshrines, in Article 7(1), the right of everybody to enjoy freedom and personal security. The Inter-American Court of Human Rights, in the case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, pointed out that freedom is a basic human right, inherent to the attributes of the person, which is cast throughout the American Convention and which, when breached, jeopardizes other rights such as personal integrity and life.⁶⁵

⁶² IACHR. Report No 55/97. Case 11.137. Juan Carlos Abella. Argentina, November 18, 1997, paras 431 to 435; and I/A Court H.R. Case of Mohamed v. Argentina. Judgment of November 23, 2012. Preliminary objection, merits, reparations and costs. Series C No. 255, para. 104.

⁶³ In this regard, see: Code of Criminal Procedures of the province of Chubut LAW XV-9 (PREVIOUSLY LAW 5478). Articles 374 to 377. Accessible at: <http://www.mpfchubut.gov.ar/images/pdf/cpp.pdf>

⁶⁴ IACHR, Report No. 97/17, Case 12.924. Merits. Julio César Ramón del Valle Ambrosio and Carlos Eduardo Domínguez Linares. Argentina. September 5, 2017; and IACHR, Report No. 98/17, Case No. 12.925, Merits, Oscar Raúl Gorioitia, Argentina, September 5, 2017.

⁶⁵ I/A Court H.R. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Judgment of November 21, 2007. Preliminary objections, merits, reparations and costs. Series C No. 170, para. 52.

76. The Inter-American Court has contended in numerous precedents that the key content of Article 7 of the American Convention is the protection of the individual's freedom from all unlawful or arbitrary interference by the state.⁶⁶ Article 7(1) enshrines the traditional and most primary notion of the right to liberty, which is coupled with the freedom of movement of the person and "covers physical conducts that presuppose the actual presence of the holder of the right and that are normally expressed in physical movement."⁶⁷

77. Likewise, the Inter-American Court has underscored the importance of the protection of the right to liberty as a prerequisite for the observance of other rights. Whenever a person is unlawfully or arbitrarily deprived of liberty, it "generates a risk of violation to other rights, such as humane treatment and, in some cases, life."⁶⁸ That is why the institutions in charge of safeguarding the full application of international human rights instruments have stressed the capital importance of providing clear requirements and effective safeguards to prevent and put an end to deprivations of liberty that may be unlawful or arbitrary.

78. The protection of the right to personal liberty is consolidated in Article 7(3), which establishes that "[n]o one shall be subject to arbitrary arrest or imprisonment." The prohibition of arbitrary deprivation of liberty is governed by a criterion that is essentially material or substantive. In that respect, it is not enough for a detention to abide by the constitution and laws of a country to be deemed lawful or legitimate, because in addition it is necessary for this statutory framework to be in line with the material principles of reasonability and proportionality. Regarding this, the Inter-American Court has established that "no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality."⁶⁹

79. The IACHR stresses that, as a rule, deprivations of liberty are deemed arbitrary when they do not stem from specific causes or objective and concrete motives, but rather are adopted on the basis of indeterminate assumptions, such as a mere suspicion or simple presumptions or conjectures. In the same vein, detentions are arbitrary when they are not grounded in reasonable motives, in particular those detentions involving discrimination for reasons of nationality, race, or other status.⁷⁰

80. Finally, the Commission emphasizes that the judicial bodies responsible for hearing criminal proceedings against adolescents in conflict with the criminal law must refrain from using reasoning that denotes prejudices or stereotypes in the grounds for their judgments, especially in the case of a conviction that results in the deprivation of liberty of the accused. The Commission recalls that, according to the jurisprudence of the organs of the inter-American system, "stereotypes constitute pre-conceptions of the attributes, conduct, roles or characteristics possessed by persons belonging to an identified group"⁷¹ and that in a judicial decision

⁶⁶ I/A Court H.R. Case of Juan Humberto Sánchez v. Honduras. Judgment of June 7, 2003. Preliminary objection, merits, reparations and costs. Series C No. 99, para. 77; I/A Court H.R. Case of Gómez Paquiyauri Brothers v. Peru. Judgment of July 8, 2004. Merits, reparations and costs. Series C No. 110, para. 82; and I/A Court H.R. Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador. Judgment of November 21, 2007. Preliminary objections, merits, reparations and costs. Series C No. 170, para. 52.

⁶⁷ I/A Court H.R. Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador. Judgment of November 21, 2007. Preliminary objections, merits, reparations and costs. Series C No. 170, para. 53.

⁶⁸ I/A Court H.R. Case of Servellón-García et al. v. Honduras. Judgment of September 21, 2006. Merits, reparations and costs. Series C No. 152, para. 87.

⁶⁹ I/A Court H.R. Case of Gangaram-Panday v. Suriname. Judgment of January 21, 1994. Merits, reparations and costs. Series C No. 16, para. 47.

⁷⁰ I/A Court H.R. Case of Torres Millacura et al. v. Argentina. Judgment of August 26, 2011. Merits, reparations and costs. Series C No. 229, para. 78. I/A Court H.R. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Judgment of November 14, 2014. Preliminary objections, merits, reparations and costs. Series C No. 287, para. 408; and I/A Court H.R. Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Judgment of May 29, 2014. Merits, reparations and costs. Series C No. 279, paras 320 and 326.

⁷¹ I/A Court. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. Par 401; I/A Court H.R., Case of Atala Riffo and others ("Campo Algodonero") v. Mexico. Case of Atala Riffo and girls v. Chile. Request for Interpretation of the Judgment on the Merits, Reparations and Costs. Judgment of November 21, 2012. Series C No. 254. Para. 111.

they can be found, for example, in the use of discursive expressions whose value, moral and/or political charge, denotes the acceptance and reproduction of stereotypes that include strong social and cultural prejudices, [...] without being derived from proven facts in the process.”⁷²

ii) Relevant standards in criminal justice and the rights of children and adolescents

81. The Commission has, on many occasions, tackled the matter of juvenile justice and its connection to human rights. In its thematic report “Juvenile Justice and Human Rights in the Americas,” the Commission identified international human rights standards that must be observed by juvenile justice systems and, in particular, the obligations of member states with respect to the human rights of children and adolescents charged with breaking criminal law.⁷³

82. The Commission indicated that the juvenile justice system must guarantee, to children and adolescents, all of the rights recognized for other human beings, but in addition it must provide them with guarantees for special protection that must be granted to them because of their age and stage of development, in line with the principal objectives of the juvenile justice system, that is, the rehabilitation of children and adolescents, their formal training, and their social reintegration to enable them to play a constructive role in society.⁷⁴

83. The Commission also identified a series of interlinked norms or *corpus juris* for the protection of children and adolescents that must be taken into consideration when interpreting the meaning of Article 19 of the American Convention and Article VII of the American Declaration. Among them, the following are noteworthy: the 1989 Convention on the Rights of the Child⁷⁵ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the “The Beijing Rules.”⁷⁶ The statutory rules emerging from said instruments must be supplemented by the decisions adopted by the Committee on the Rights of the Child in fulfillment of its mandate and by General Comment No. 10 on children’s rights in juvenile justice.⁷⁷

84. Article 5 of the Convention on the Rights of Child establishes that public and private institutions of all kinds must always bear in mind the best interests of the child in all the measures of the decisions they take. The Inter-American Court has specified that the notion of the best interests of the child “implies that the development of the child and the full exercise of their rights must be viewed as governing principles for drawing up norms and implementing them in all spheres relative to the life of the child.”⁷⁸

85. Likewise, because international law has clearly established that legal age is reached when the person becomes 18 years old,⁷⁹ all persons must be subject to a special criminal justice regime when the evidence provided in a given case indicates that the person being charged had not reached 18 years of age at the time of

⁷² I/A Court. Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279. Para 225.

⁷³ IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78, July 13, 2011. Original: Spanish. Accessible at: <https://www.oas.org/es/cidh/infancia/docs/pdf/JusticiaJuvenil.pdf>

⁷⁴ IACHR. Juvenile Justice and Human Rights in the Americas, para. 4. OEA/Ser.L/V/II. Doc. 78, July 13, 2011 Original: Spanish. Accessible at: <https://www.oas.org/es/cidh/infancia/docs/pdf/JusticiaJuvenil.pdf>

⁷⁵ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force: 2 September 1990, in accordance with Article 49. New York, 20 November 1989. Article 40(2)(b)(v).

⁷⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Adopted by UN General Assembly resolution 40/33, November 28, 1985.

⁷⁷ United Nations. Committee on the Rights of the Child. General Comment No. 10. Children’s right in juvenile justice. CRC/C/GC/10. April 25, 2007, para. 60.

⁷⁸ I/A Court H.R. Juridical condition and human rights of the child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 53.

⁷⁹ The American Convention on Human Rights does not provide a definition for the term “child and adolescent.” Nevertheless, the Inter-American Court, in its Advisory Opinion 17, specified that, “taking into account international norms and the criterion upheld by the Court in other cases, ‘child’ refers to any person who has not yet turned 18 years of age.” In particular, the Court took into account the definition of child or adolescent appearing in Article 1 of the Convention on the Rights of the Child and the international *corpus juris* on the matter. I/A Court H.R. Juridical condition and human rights of the child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 42.

violation of criminal law.⁸⁰ In that regard, recently the IACHR, in its report on “Children and Adolescents in the United States’ Adult Criminal Justice System,” pointed out that “children are different from adults and require special treatment with regard to their criminal responsibility for crimes committed, and in particular, that it is necessary to prioritize the rehabilitation of child offenders over the goals of retribution and incarceration”⁸¹ and concluded that “[a]ll adolescents who stand accused of a crime are entitled to be tried in a special juvenile justice system, separate from the criminal justice system in which adults are tried, in order to ensure that their fundamental rights are afforded due protection and respect, in accordance with their age and developmental needs.”⁸²

86. In terms of substantive guarantees that must be applied in juvenile criminal proceedings, the Commission stresses, first of all, with respect to the instant case, that the principle of criminal legality enshrined in Article 9 of the American Convention must govern the statutory framework of the juvenile justice system and that restricting the freedom of a children or adolescent unlawfully or not defined as an action classified as a crime, constitutes a gross violation of human rights. As a result the state cannot call for deprivation of the liberty of the child or adolescents or the breach of other rights inherent to the person, on the grounds that the child requires remedial custodial treatment.⁸³

87. Second, states must abide by the principle of exceptionality, which, pursuant to Article 37(b) of the Convention on the Rights of the Child, requires that states make sure that detention, incarceration, or jailing of a child shall be used as measure of last resort. The Commission stipulated that “the juvenile justice system—especially the deprivation of liberty of children—must be used only as a last resort and only by way of exception, and for as short a time as possible.”⁸⁴ It also pointed out that “States must take whatever measures they can to minimize children’s contact with the juvenile justice system and regulate, in a proportional way, the statutes of limitations and limit the use of the deprivation of liberty—whether as preventive detention or sentence—when criminal laws are violated.”⁸⁵

88. In the same vein, General Comment No. 10 of the Committee on the Rights of the Child provides that “[t]he laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty (...) to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37(b) of CRC).”⁸⁶

89. Third, the Commission stresses that, according to the principle of specialization arising from Article 5(5) of the American Convention and Article 40(3) of the Convention on the Rights of the Child, children accused of violations of criminal law are to be subject to a specialized system of justice.⁸⁷ Likewise, the Inter-American Court has contended that one obvious consequence of the relevance of dealing in a differentiated manner with matters that pertain to children, and specifically those pertaining to an unlawful behavior, is the establishment

⁸⁰ In that regard, see: UN Committee on the Rights of the Child. General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, April 25, 2007, paras. 36 and 37; and IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78, July 13, 2011, para. 38.

⁸¹ IACHR. Children and Adolescents in the United States’ Adult Criminal Justice System, OAS/Ser.L/V/II.167, Doc. 34, March 1, 2018. Original: English, para. 29. Accessible at: <http://www.oas.org/es/cidh/informes/pdfs/NNA-USA.pdf>

⁸² IACHR. Children and Adolescents in the United States Adult Criminal Justice System, OAS/Ser.L/V/II.167, Doc. 34, March 1, 2018. Original: English, para. 36. Accessible at: <http://www.oas.org/es/cidh/informes/pdfs/NNA-USA.pdf>

⁸³ IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78, July 13, 2011, para. 66. Original: Spanish. Accessible at: <https://www.oas.org/es/cidh/infancia/docs/pdf/JusticiaJuvenil.pdf>; and IACHR, Report No. 41/99, Case 11.491, Admissibility and Merits, Minors in detention, Honduras, March 10, 1999, paras. 109 and 110.

⁸⁴ IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78, July 13, 2011, para. 80. Original: Spanish. Accessible at: <https://www.oas.org/es/cidh/infancia/docs/pdf/JusticiaJuvenil.pdf>.

⁸⁵ IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78, July 13, 2011, para. 80. Original: Spanish. Accessible at: <https://www.oas.org/es/cidh/infancia/docs/pdf/JusticiaJuvenil.pdf>.

⁸⁶ United Nations. Committee on the Rights of the Child. General Comment No. 10. The rights of the child in juvenile justice. CRC/C/GC/10. 25 April 2007, para. 70.

⁸⁷ IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78, July 13, 2011, para. 81. Original: Spanish. Accessible at: <https://www.oas.org/es/cidh/infancia/docs/pdf/JusticiaJuvenil.pdf>.

of specialized jurisdictional bodies to hear cases involving conduct defined as crimes and attributable to them and a special procedure whereby these breaches of criminal law are heard.⁸⁸

90. Observance of the aspects indicated above is essential to prevent the state from breaching the American Convention in the context of restrictions on the liberty of children and adolescents. Article 37(b) of the Convention on the Rights of the Child provides that states must make sure that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily.” All of the above means that if judges decide that it is necessary to apply a criminal sanction, and if this is deprivation of liberty, even though this is provided for by law, its application may be arbitrary and violate Article 7(3) of the American Convention if the basic principles that regulate this matter are not considered.⁸⁹

91. The Inter-American Court has also explained that, in a criminal jurisdiction specializing in juveniles, those authorized to act in the different stages of the proceedings and the different stages of the administration of justice for juveniles must be especially prepared and trained in human rights and child psychology to prevent abuse of their discretionary powers and to ensure that the measures ordered are suitable, necessary, and proportional.⁹⁰

92. Finally, with respect to Argentina’s regulatory framework applicable to the instant case, the Commission indicated, in its report on “Juvenile Justice and Human Rights in the Americas,” that under Law 22.278 children between the ages of 16 and 18 who commit crimes can be tried as adults. Although the judicial authority is empowered either not to impose any sentence at all, or to reduce the sentence to one applicable to an attempt to commit the crime of which the child was convicted, the law allows a judge, at his or her discretion, to impose the same penalties prescribed under the regular criminal justice system. The Commission contended, in said report, that this treatment, which draws no distinction between adult and child, may be incompatible with the principle of the proportionality of the sentence and the lesser culpability of children in light of the best interests of the child, which must guide the consideration of conduct of adolescents in conflict with the law.⁹¹

93. Finally, the Commission recalls that in the case of *Mendoza et al. v. Argentina*, the Inter-American Court referred to the various problems arising from the application of Law 22.278 and the State’s failure to comply with its obligation under Article 2 of the American Convention to adopt domestic provisions to guarantee the exercise of rights. In this regard, the Court indicated in relation to this law - which was sanctioned during the last Argentine military dictatorship - that:

The system provided by Article 4 of Law 22.278 (...) leaves a wide margin of discretion to the judge to determine the legal consequences of the commission of a crime by persons under 18 years of age, taking as a basis not only the crime, but also other aspects such as “the background of the minor, the result of the tutelary treatment and the direct impression gathered by the judge”. Likewise, from the wording of paragraph 3 of Article 4 of Law 22.278, it is clear that judges may impose on children the same penalties provided for adults, including deprivation of liberty, contemplated in the Criminal Code of the Nation, (...) From the foregoing, the Court considers that the consideration of other elements beyond the crime committed, as well as the possibility of imposing on children criminal penalties provided for adults, are contrary to the principle of proportionality.

iii) Analysis of the case

94. The Commission stresses, first of all, that according to the information stemming from the case file, Diego Armando Pacheco was involved in criminal proceedings for the crime of manslaughter, perpetrated by

⁸⁸ I/A Court H.R. Juridical condition and human rights of the child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 109; and IACHR, Report No. 41/99, Case 11.491, Admissibility and Merits, Minors detained, Honduras, March 10, 1999, para. 125.

⁸⁹ I/A Court H.R. Case of *Mendoza et al. v. Argentina*. Preliminary objections, merits and reparations. Judgment of May 14, 2013. Series C No. 260, para. 161.

⁹⁰ I/A Court H.R. Case of the “Juvenile Reeducation Institute” v. Paraguay. Judgment of September 2, 2004. Preliminary objections, merits, reparations and costs. Series C No. 112, para. 211.

⁹¹ IACHR. Juvenile Justice and Human Rights in the Americas, para. 42. OEA/Ser.L/V/II. Doc. 78. July 13, 2011 Original: Spanish. Accessible at: <https://www.oas.org/es/cidh/infancia/docs/pdf/JusticiaJuvenil.pdf>.

the petitioner when he was 17 years of age. As a consequence, as indicated in the case file, the judicial proceedings were governed by the Code of Criminal Procedures of the province of Chubut in force at the time and by the National Law 22.278 of the Criminal System for Juveniles.

95. In observance of Article 4 of Law 22.278, the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia ruled that Diego Armando Pacheco was “criminally culpable” for the crime of manslaughter and ordered that he undergo “remedial custodial treatment until reaching legal age, under the supervision of the court-appointed Family Counsellor and Guardian Ad Litem.” The Commission deems it is necessary to add that, in the same judgment, two other co-defendants of legal age were acquitted.

96. Subsequently, as described in the section on the determinations of fact, the First Chamber, on the basis of the ruling of September 17, 2002, decided to sentence the petitioner to four years prison. The Commission stresses that, as part of the grounds for its decision, one of the judges stated, after summarizing the statement made by Mr. Pacheco and the Monitoring Delegate, Ms. Sandra Nora Romers, that “it cannot be avoided, when ruling on the case being submitted for a ruling, that there is an absence of certainty about the possibility that the person being tried will not once again repeat his antisocial behavior, which has its origin in his failure to contain his emotions and his proven and self-avowed alcoholism.”⁹²

97. Likewise, another judge who signed the judgment of conviction argued that “it is not a foregone conclusion that the young man Pacheco will not engage in new serious criminal conduct. Regarding this, it is evident that the outcome of the remedial custodial treatment that was ordered at that time in the sentencing, which declared that he was criminally culpable, there is no indication that it had produced any significant change in the behavior, habits, etc., of the accused.”⁹³

98. On the basis of the review of the judgments summarized above, the Commission understands, first of all, that the decision to sentence Mr. Pacheco to prison did not stem exclusively from the criminal conduct possibly committed by the petitioner, as required by the principle of legality and the right to personal liberty. On the contrary, the alleged failure of the remedial custodial treatment which the petitioner was required to undergo, in accordance with Article 4 of Law 22.278, as well as a series of general considerations of a preventive nature relative to an alleged risk of future recidivism, which has no connection to the event for which the petitioner was tried, accounts for a large portion of the arguments of the judges.

99. In this regard, the Commission emphasizes that the arguments used to support the petitioner's conviction were in part based on prejudices and stereotypes that automatically linked the alleged addiction to alcohol of the alleged victim, his alleged personal habits - of which no further reference is made - and the outcome of the tutelary treatment with the likelihood of future criminal recidivism.

100. Regarding the remedial custodial treatment provided for in Article 4, subparagraph 3, of Law 22.278, the Commission observes that it pursues a licit objective given that it is aimed at having the adolescent offender internalize the basic rules governing peaceful coexistence and in this manner make his social rehabilitation possible. Despite the above, however, the Commission deems that, if that treatment did not yield the outcome that the professionals in charge chose of it or those that the judges wished it to have, this situation cannot be an integral part of the judgment of criminal penalty leading to a prison sentence depriving him of his liberty.

101. On this point, the Commission cannot fail to stress that, according to the allegations made by the petitioners, Mr. Pacheco had to tackle a series of material setbacks that made it impossible for him to attend regularly the consultations with his psychologist and the counsellor of his remedial custodial treatment. For example, the petitioners mentioned that Mr. Pacheco lived more than 120 kilometers away from the place where he had to go for the consultations, that the means of transportation from Sarmiento, the city where he

⁹² ANNEX 8. Judgment No. 50/2002 of the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia of September 17, 2002, p. 15. Annex 1 to the communication from the petitioners, received by the Commission on May 21, 2004.

⁹³ ANNEX 8. Judgment No. 50/2002 of the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia of September 17, 2002, pp. 23 and 24. Annex 1 to the communication from the petitioners, received by the Commission on May 21, 2004.

lived, to Comodoro Rivadavia where his psychologist was located were scarce and very infrequent and that oftentimes he could not go to the interviews because he was working.⁹⁴

102. With this panorama in mind, the Commission stated that, although the reasons or motives why the remedial custodial treatment did not yield the outcome that had been outlined or expected by the judges do not modify the conclusions stated in the preceding paragraphs, it did turn out to be especially problematic, in the light of the principle of the best interests of the child and the exceptional status of the penalty, that the state's response to the objectives difficulties shown by Mr. Pacheco to move forward with his remedial custodial treatment consisted of sentencing him to deprivation of liberty.

103. In that regard, the Commission considers that a deprivation of liberty such as the one experienced by Mr. Pacheco, which was not grounded in the criminal action he had committed and was imposed in addition because of the alleged failure of, or absence of responsible compliance with, the remedial custodial treatment and because of a prognosis of probable future recidivism, based on stereotypes and preconcepts about the personal characteristics of the petitioner, violated the principle of legality enshrined in Article 9 of the same treaty and makes the deprivation of liberty arbitrary and incompatible with Article 7(3) of the American Convention. All of this violates also the special obligations of protecting the best interests of the child, as laid out in Article 19 of the American Convention.

104. Finally, the Commission stressed that the judicial proceeding involving Mr. Pacheco was led, from the beginning, by a Court of Sarmiento and, in the plenary or trial stage, by the First Chamber of the Criminal Court of the Judicial District of Comodoro Rivadavia. The IACHR understands that both courts were regular courts not specializing in juvenile offense law, a circumstance that violates the principle of specialization enshrined in Articles 5.5 of the American Convention and 40.3 of the Convention on the Rights of the Child⁹⁵.

105. In view of the above, notwithstanding the previously stated violations, the Commission will also conclude that the state of Argentina did not fulfill its obligation to adjust its legal system to guarantee special protection to Diego Armando Pacheco as an adolescent in conflict with criminal law. As a result, the Commission concludes that the state is responsible for the violation of Article 19 of the American Convention, in connection with Article 2 of the same treaty.

VI. PROCEEDINGS SUBSEQUENT TO REPORT 138/21 AND COMPLIANCE INFORMATION

106. The Commission adopted Merits Report No. 138/21 on June 28, 2021, comprising paragraphs 1 to 105 above, and transmitted it to the State on August 27 of the same year. In this report the Commission recommended:

1. To provide comprehensive reparations, both material and intangible, for the violations of human rights as stated in the present report.
2. To order the necessary measures so that Diego Armando Pacheco can have access to a criminal proceeding with due judicial guarantees. In particular, to provide necessary measures so that Diego Armando Pacheco, if he so wishes, can file an appeal whereby a full review of the judgment can be conducted in compliance with Article 8(2)(h) of the American Convention.
3. To undertake the necessary statutory reforms in order to ensure that adolescents between 16 and 18 years of age in conflict with criminal law can be judged in proceedings that are differentiated from those for adults, abiding by the principles that govern the guarantees for the rights of the child, in line with their best interests

⁹⁴ Communication from the petitioner, May 11, 2004.

⁹⁵ I/A Court H.R., Case of "Instituto de Reeducción del Menor" v. Paraguay. Case of "Instituto de Reeducción del Menor" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112. Paras. 201 to 213.

and the principle of proportionality of the penalty, legality, exceptionality, and specialization for meting out punishments.

107. The Commission received reports from the State on compliance with the established recommendations and observations from the petitioner. During this period, the Commission granted seven extensions to the State for the suspension of the time period provided for in Article 51 of the American Convention. Likewise, the State reiterated its willingness to comply with the recommendations and expressly waived its right to file preliminary objections with respect to compliance with the deadline established in the aforementioned Article, in accordance with the provisions of Article 46 of the Commission's Rules of Procedure.

108. The Commission takes note that on August 9, 2022, the parties signed an "Agreement on Compliance with Recommendations" whereby the State undertakes to adopt the following measures:

1. To publish this agreement in the "Official Gazette of the Argentine Republic". Likewise, a gazette shall be published in a local newspaper of wide circulation within the Province of Chubut and in a newspaper of national circulation; the content of this publication shall be consulted between the parties.

2. With regard to the second recommendation, the petitioner stated that it was not the young man's intention to submit his case to the courts again, since it would be revictimizing. On the other hand, it was requested that the means be taken to ensure that there is no criminal record of any kind, either at the local or national level, in connection with the case that gave rise to the petition before the Commission. The State indicated that as of February 16, 2022, Diego Armando Pacheco has no criminal record. As for the records in the provincial sphere, the petitioner filed the request with the Provincial Registry of Criminal Records, since it was to be submitted by the young man's defense; and according to information provided by the defense itself, the petitioner does not currently have a record in the provincial sphere.

3. With regard to the third recommendation, the State indicated that since 2005, the new Criminal Procedure Code of the Province of Chubut (Law XV No. 9) has been in force, which provides, in Book V, the special rules for children and adolescents, which establish the characteristics of the differentiated process for minors. Therefore, the parties agree that this point does not need to be the subject of an agreement on compliance with recommendations.

4. In relation to the pecuniary reparation, the parties agree to constitute an ad-hoc Arbitral Tribunal for the purpose of determining the amount of pecuniary reparations due to the petitioner, as well as the costs of the proceeding, both in the international proceeding and in the arbitration proceeding. The tribunal shall be composed of three independent experts, one appointed at the proposal of the petitioning party, another at the proposal of the State, and the third at the proposal of the two previous ones. As long as the parties have not objected to the proposed experts, the Tribunal shall be constituted no later than 45 calendar days following the publication of the Decree of the National Executive Branch approving this agreement. The procedure to be applied shall be defined by mutual agreement between the parties, who shall draw up their rules of procedure, and the costs of the tribunal shall be borne by the State. Likewise, the award shall be final and not subject to appeal, unless any of the grounds for nullity set forth in Article 760 of the Code of Civil and Commercial Procedure of the Nation are verified, in which case an appeal for nullity shall be filed before the Federal Administrative Court.

109. On July 24, 2023, Decree No. 388 approved the agreement of compliance with the recommendations entered into on August 9, 2022, which was published in the Official Gazette on July 25, 2023.

110. After evaluating the available information on the status of compliance with the recommendations, the Commission decided on August 17, 2023 not to send the case to the Inter-American Court and to proceed with the publication of the merits report as established in Articles 51 of the American Convention and 47 of the Rules of Procedure of the IACHR.

111. The Commission informed the parties that:

In examining the case, the Commission evaluated the substantive progress in the integral compliance with the recommendations of the Merits Report. In particular, the Commission noted that the parties signed a compliance agreement in which it was agreed to constitute an Arbitral Tribunal for the purpose of determining the amount of pecuniary reparations. The Commission also noted that the agreement establishes that it must be approved by a Decree of the National Executive Branch and immediately published in the Official Gazette of the Argentine Republic, after which, as agreed by the parties, the Ministry of Foreign Affairs, International Trade and Worship would request the IACHR to adopt the report contemplated in Article 51 of the American Convention. In this regard, the Commission noted that on July 24, 2023, the Presidential Decree approving the agreement was published in the Official Gazette and that on August 2 of the current year, the State made the request to proceed with the adoption of the report contemplated in Article 51 of the Convention. Said request was forwarded to the petitioning party and no observations were received during the period granted.

112. On November 15, 2023, the State indicated that the text of The Gazette for dissemination of the agreement on compliance with the recommendations was sent to the petitioner for consideration.

113. On December 6, 2023, the State sent attachments of the publication of the summary agreed upon with the Office of the Public Defender of the Province of Chubut, in the national newspaper *Página 12* and in the newspaper *Crónica de la Provincia de Chubut*, of November 30, 2023.

114. The IACHR appreciates the measures adopted by the State to reach an agreement with the petitioner to comply with the recommendations. The State reported on compliance with said agreement on the three points indicated in paragraph 108, paragraphs 1, 2 and 3 above. In view of this, both parties requested the IACHR, through the Ministry of Foreign Affairs, International Trade and Worship, to issue the final merits report in accordance with Article 51 of the American Convention, at which time the agreement will acquire full legal force.

115. In relation to the first recommendation, without prejudice to compliance with the publications agreed upon in the Compliance Agreement (paragraph 108, paragraph 1 above), the Commission has not received information on the composition of the arbitration tribunal, or the award adopted on the amount of the pecuniary reparations, nor the payment thereof. Therefore, the State has partially complied with this reparation.

116. With regard to the second recommendation, the Commission notes that the victim does not wish to resubmit her case to the courts, since this would result in revictimization. It also notes that in response to his request that the means be taken to ensure that there is no criminal record of any kind, either at the local or national level, in connection with the case, the State informed that Diego Armando Pacheco has no criminal record at the local or national level. In view of this, the Commission considers that the State does not need to promote other actions aimed at complying with this recommendation. Consequently, in view of the request of the parties and taking into account the nature of the violation, in the circumstances of this case, this recommendation will not be followed up.

117. With regard to the third recommendation, the Commission notes that since 2005 the new Code of Criminal Procedure of the Province of Chubut (LEY XV N°9) has been in force, which provides, in Book V, special rules for children and adolescents, which establish characteristics of the differentiated process for minors, and therefore the parties indicated that this point does not need to be the subject of the Compliance Agreement. In view of this, the Commission notes that the Code of Criminal Procedure of the Province of Chubut⁹⁶ has special rules for the trial of children and adolescents, which ensure that adolescents between 16 and 18 years of age in conflict with the criminal law are tried in proceedings that are different from those for adults. In view of this, the Commission considers that the State does not need to promote other actions aimed at complying with this recommendation and this recommendation will not be followed up.

⁹⁶ Procedural Criminal Code of Chubut Province and Complimentary Laws. [Código Procesal Penal de la Provincia del Chubut y leyes complementarias](#). Publication: Official Bulletin May 5, 2006 N° 998. Arts. 401-413.

VII. ACTIONS FOLLOWING REPORT No. 70/25 AND INFORMATION ON COMPLIANCE

118. On May 1, 2025, the Commission adopted Admissibility and Merits Report (Final) No. 70/25, which includes paragraphs 1 through 117 above, and issued its final conclusions and recommendations to the State. On May 14 of the same year, it transmitted it to the State and the petitioner, granting them a period of two weeks to inform the IACHR of the measures taken to comply with its recommendations. To date, the Commission has not received a response from the Argentine State regarding Report No. 70/25.

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

119. The Commission concludes that the state of Argentina is responsible for violating the right to appeal a judgment, the right to not be subject to arbitrary detention or incarceration, the principle of legality, and its duty to adopt special protection measures for adolescents in conflict with criminal law enshrined in Articles 8(2)(h), 7(3), 9, and 19 of the American Convention, in connection with Articles 1.1 and 2 of the same international instrument, to the detriment of Diego Armando Pacheco.

120. Based on the analysis and conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE STATE OF ARGENTINA,

1. To provide comprehensive reparations, both material and intangible, for the violations of human rights as stated in the present report.

IX. PUBLICATION

121. In accordance with the foregoing and pursuant to Article 51(3) of the American Convention, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the rules established in the instruments that regulate its mandate, will continue to evaluate whether the State of Argentina has provided full reparation to the victim in accordance with the above recommendation, until it determines that it has been fully complied with.

Approved by the Inter-American Commission on Human Rights on July 14, 2025. (Signed): José Luis Caballero Ochoa, President; Arif Bulkan, Second Vice President; Roberta Clarke, Carlos Bernal Pulido, and Gloria Monique de Mees, Members of the Commission.