INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF FURLAN AND FAMILY *v.* ARGENTINA

JUDGMENT OF AUGUST 31, 2012
(Preliminary Objections, Merits, Reparations and Costs)

In the Case of Furlan and Family,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), comprised of the following judges[1]:

Diego García-Sayán, President;
Manuel E. Ventura Robles, Vice-president;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge;
Alberto Pérez Pérez, Judge and
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

In accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles 31, 32, 56, 57, 65 and 67 of the Rules of Procedure of the Court[2] (hereinafter "the Rules of Procedure"), renders this Judgment, which is structured as follows:

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[1] Judge Leonardo A. Franco, an Argentinean national, did not participate in the hearing or deliberation of this case pursuant to the Article 19(1) of the Rules of Procedure of the Court, which states that "In the cases referred to in Article 44 of the Convention, a Judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case."

[2] Rules of Procedure of the Court approved by the Court in its Eighty-Fifth Regular Period of Sessions held from November 16 to 28, 2009, which, pursuant to Article 78 therein entered into effect on January 1, 2010.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On March 15, 2011 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or the Commission), pursuant to Articles 51 and 61 of the American Convention, submitted to the jurisdiction of the Inter-American Court the case of Sebastián Furlan and Family v. the Republic of Argentina (hereinafter "the State" or "Argentina"). The initial petition was filed before the Inter-American Commission on July 18, 2001 by Mr. Danilo Furlan in representation of his son Sebastián Claus Furlan (hereinafter "Sebastián Furlan" or the "alleged victim").

2. On March 2, 2006 the Commission approved Report on Admissibility No. 17/06, and on October 21, 2010 it issued the Report on Merits No. 111/10, in accordance with Article 50 of the American Convention.[3] Subsequently, considering that the State has not complied with the recommendations contained in the Report on Merits, the Inter-American Commission decided to submit the case to the jurisdiction of the Inter-American Court. The Commission appointed Commissioner Luz Patricia Mejía and Executive Secretary Santiago A. Canton as its Delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, Silvia Serrano Guzmán, Karla I. Quintana Osuna, Fanny Gómez Lugo and María Claudia Pulido, attorneys of the Executive Secretariat, as legal advisors.

3. According to the Commission, this application is related to the State's alleged international responsibility for the "lack of timely response by the Argentinean judicial authorities, who incurred in an excessive delay in the resolution of a civil action against the State, whose response depended on the medical treatment of the [alleged] victim, as a child with disabilities." The Commission requested that the Court declare the violation of Articles 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention to the detriment of Sebastián Furlan and Danilo Furlan. In addition, it requested that the Court declare the violation of Article 25(2.c) (Judicial Protection) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Sebastián Furlan. Furthermore, it alleged the violation of Articles 5(1) (Right to Personal Integrity) and 19 (Rights of the Child) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention to the detriment of Sebastián Furlan. Also, it requested that the Court declare the violation of Article 5(1) (Right to Personal Integrity), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention to the detriment of Danilo Furlan, Susana Fernández, Claudio Erwin Furlan and Sabina Eva Furlan. Finally, pursuant to Article 35(1.g) of the Rules of Procedure, in its brief submitting the case, the Commission requested that the Court order the State to implement reparation measures.

II
PROCEEDING BEFORE THE COURT

4. On April 5, 2011, following the instructions of the President of the Court (hereinafter "the President"), the Secretariat of the Court (hereinafter "the Secretariat") informed Mr. Danilo Furlan, who acted as representative of Sebastián Furlan and his family, that Article 37 of the Court's Rules of Procedure establishes the mechanism of the Inter-American Defender, whereby "[i]n cases where alleged victims are acting without duly accredited legal

[3] Report on Merits No. 111/10, Case 12.539, Sebastián Claus Furlan and Family of October 21, 2010 (File on Merits, volume I, pages 5 to 48).

representation, the Court may, on its own motion, appoint an Inter-American defender to represent them during the processing of the case."[4]

5. On April 15, 2011 Mr. Danilo Furlan indicated his "need to be represented" before the Court "by the Inter-American Defender who would be appointed [for him]."[5] Consequently, on the same date, the request for legal assistance was forwarded to the Inter-American Association of Public Defenders (hereinafter AIDEF), bearing in mind the provisions contained in the Memorandum of Understanding between the Inter-American Court and said Association.[6] On April 25, 2011 AIDEF informed the Court that the Inter-American defenders María Fernanda López Puleio (Argentina) and Andrés Mariño (Uruguay) had been appointed as representatives of the alleged victims (hereinafter "the representatives") to undertake their legal representation in the instant case.

6. The submission of the case was notified to the State and the representatives on May 23, 2011. On July 26, 2011 the representatives submitted to the Court their written brief containing pleadings, motions and evidence (hereinafter "brief of pleadings and motions"), pursuant to Article 40 of the Rules of Procedure of the Court. The representatives agreed, in general terms, with the violations claimed by the Inter-American Commission, and added the alleged violation of the following Articles of the American Convention: 8(2) (e) (Right to a Fair Trial), 21 (Right to Property) and 26 (Progressive Development of Economic, Social and Cultural Rights), in relation to Articles 1(1) and 2 (Obligation to Respect Rights and Domestic Legal Effects) to the detriment of Sebastián Furlan and his family.[7] The representatives also requested access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Legal Assistance Fund" or "the Fund") "both for the specific defense in the international proceedings, and for the expenses that [will be] required for the intervention of the Inter-American Defenders."

7. On October 28, 2011 Argentina filed before the Court its response to the petition and observations to the brief of pleadings and motions (hereinafter "response to petition"). In

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[4] In this regard, in a Note from the Secretariat, Mr. Danilo Furlan was informed that, following a preliminary evaluation of the briefs presented by him during the processing of his petition before the Inter-American Commission, the President of the Court had deemed it appropriate to ask him whether he was interested in having an Inter-American defender, bearing in mind that, from the briefs included in the file, it could be inferred that Danilo Furlan was not an attorney, and that the attorney who had participated in the filing of remedies in the domestic courts, in principle, had not participated in the defense of the case before the Inter-American System. *Cf.* Secretariat's note CDH-S/970 of May 2, 2011, addressed to Mr. Danilo Furlan (File on Merits, volume I, pages 89 and 90).

[5] Brief of April 15, 2011 submitted by Mr. Danilo Furlan (File on Merits, volume I, pages 75 and 76).

[6] In a Note from the Secretariat, following the instructions of the President of the Court, several inquiries by Mr. Danilo Furlan were addressed concerning the representation that would be exercised by the Inter-American Defenders. The Note explained that although public defenders work for the State when they perform their duties they must ensure respect for the guarantees and application of human rights of the parties they are representing. Similarly, as Inter-American defenders before the Inter-American Court, they must seek to defend the human rights of the alleged victim. It was also indicated that the appointment of a national defender in some cases is related to practical considerations, such as being able to have constant and close communication with the alleged victim and expertise on the domestic law, which in many cases is necessary in order to litigate a case before the Inter-American Court.

[7] Specifically, in their brief of pleadings and motions the representatives claimed that the State had violated the following Articles of the American Convention: i) to the detriment of Sebastián Furlan, Articles 1(1), 2, 5(1), 8.1, 8(2.e), 19, 21, 26, 25, 25(1) and 25(2.c) of the Convention; ii) to the detriment of Danilo Furlan, Susana Fernández, Claudio Erwin Furlan and Sabina Eva Furlan, Articles 1(1), 2, 8.1, 19, 21, 25(1) and 25(2.c) and Article, in relation to Articles 1(1) and 2 of the Convention, and iii) to the detriment of Diego Germán Furlan and Adrián Nicolás Furlan, Articles 1(1), 2, 8(1), 19, 21, 25(1) and 25 (2.c) and Articles 5(1), in relation to Articles 1(1) and 2 of the Convention.

said response, the State filed three preliminary objections, namely: i) "[f]ailure to exhaust domestic remedies"; ii) "[the Court's] lack of jurisdiction *ratione temporis* to hear claims regarding the consequences of the application of Law 23.892 of the debt consolidation regimen," and iii) "Violation of the right to defense of the State of Argentina during the substantiation of the case before the Inter-American Commission." Likewise, the State concluded that in this case there are insufficient elements to determine the violation of the rights or guarantees recognized under the American Convention. Finally, the State requested that the Court, in a subsidiary manner, "take into account international parameters and standards set by constant jurisprudence and reject excessive pecuniary claims." The State appointed as its Agent the Minister Eduardo Acevedo Díaz, General Director of Human Rights of the Ministry of Foreign Affairs, International Trade and Worship, and as deputy agents Alberto Javier Salgado, Director of International Litigation of the Human Rights Directorate, Ms. Andrea Gualde, International Director of Legal Affairs of the Secretariat of Human Rights and Ambassador Juan José Arcuri, Ambassador of the Republic of Argentina in Costa Rica.

8. Through the Order of November 23, 2011, under the terms of Article 4 of the Memorandum of Understanding signed between the Inter-American Court and the AIDEF, the President of the Court declared admissible the application for the Legal Assistance Fund for the representatives (*supra* para. 6).[8]

9. On December 9 and 10, 2011 the representatives and the Inter-American Commission presented, respectively, their observations to the preliminary objections filed by the State. In this regard, both the representatives and the Commission asked the Court to dismiss these objections.

10. Through the Order of January 24, 2012,[9] the President of the Court requested affidavits from one alleged victim, two witnesses and two expert witnesses, which were submitted on February 13 and 14, 2012. Furthermore, in said Order the President summoned the parties to a public hearing (*infra* para. 11) and made determinations regarding the Legal Assistance Fund (*supra* para. 8).

11. The public hearing took place on February 27 and 28, 2012 during the 94th Regular Period of Sessions of the Court, which took place at its seat.[10] The statements of the alleged victim and three witnesses were received at the hearing, as well as the observations and closing oral arguments of the Inter-American Commission, the representatives and the State. During said hearing, and through the Secretariat's note of March 2, 2012, the Court required

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[8] *Case of Furlan and Family v. Argentina. Victims' Legal Assistance Fund.* Order of the President of the Inter-American Court of Human Rights of November 23, 2011. Available at: http://www.corteidh.or.cr/docs/Merits_victimas/furlan_fv_11.pdf

[9] *Cf. Case of Furlan and Family v. Argentina.* Order of the President of the Inter-American Court of Human Rights of January 24, 2012. Available at: http://corteidh.or.cr/docs/asuntos/furlan.pdf

[10] The following persons appeared at this hearing: a) for the Inter-American Commission: Rodrigo Escobar Gil, Commissioner; Elizabeth Abi Mershed, Deputy Executive Secretary, and Karla I. Quintana Osuna, Specialist of the Executive Secretariat; b) for the representatives: María Fernanda López Puleio, Inter-American Defender; Andrés Mariño, Inter-American Defender, and Nicolás Javier Ossola, and c) for the State: Javier Salgado, Agent, Director of International Litigation of the Human Rights Directorate, Argentinean Ministry of Foreign Affairs, Gonzalo Bueno, Department of International Litigation of the Human Rights Directorate, Argentinean Ministry of Foreign Affairs; Yanina Berra Rocca, General Department of Legal Counsel, Argentinean Ministry of Foreign Affairs; María Eugenia Carbone, Coordinator of International Affairs of the National Human Rights Secretariat; Natalia Luterstein, Advisor of the National Human Rights Secretariat, and Mariángeles Misuraca, Advisor to the National Human Rights Secretariat.

the parties and the Commission to submit certain documentation and explanations to facilitate adjudication of the case.[11]

12. Moreover, the Court received *amici curiai* briefs from the *Programa de Acción por la Igualdad y la Inclusión Social* (PAIIS, Action Program for Equality and Social Inclusion), from the Faculty of Law of the Universidad de los Andes, Colombia[12] and from Mr. Ezekiel Heffes.

13. On March 28, 2012 the representatives and the State submitted their closing written arguments and the Inter-American Commission presented its final written observations on this case. Likewise, on that occasion the parties responded to the Court's request for information, documentation and explanations to facilitate adjudication of the case (*supra* para. 11). These briefs were notified to the parties, who were given a deadline to submit the pertinent observations. These observations were presented by the representatives and the Inter-American Commission on April 27 and May 4, 2012, respectively. The State did not submit observations to the information and documentation provided by the representatives.

14. On May 16, 2012, following the instructions of the President, the Secretariat of the Inter-American Court asked the State to submit its observations regarding the file on expenses of the Legal Assistance Fund. The State submitted two requests for a deferment to submit said observations, both of which were granted. However, the State did not forward these observations.

III
PRELIMINARY OBJECTIONS

15. The Court deems it necessary to reiterate that, like any body with judicial functions, it has the inherent power to determine the scope of its own jurisdiction (*compétence de la compétence*).[13] Accordingly, the Court will analyze the admissibility of the preliminary objections filed in the order in which they were raised (*supra* para.7).

A) "Preliminary objection to the failure to exhaust domestic remedies"

Arguments of the parties and of the Inter-American Commission

16. The State held that "the domestic remedies were not exhausted in relation to the method of payment of the judgment." First, it indicated that the preliminary objection

[11] The following documentation or explanations were requested, *inter alia*: 1) information regarding the types of medical and psychological treatment provided to Sebastián Furlan and his family: 2) information regarding the legal obligations and powers of judges in relation to intervention of the Office for Juvenile Assistance; 3) legal effects of the Juvenile Defense Counsel not intervening in a process involving minors; 4) information on the domestic law applicable to determine the filing of a complaint and to determine ownership of a property, 5) information on the concept of informative evidence, process of notice of suit, determination stage of the defendant, burden of proof and expediting of civil proceedings, system of communications and notifications; 6) information on systems for the payment of compensation existing in Argentina at the time of the facts and currently; 7) information on the final amount of compensation, the process of purchase and sale of bonds, transaction receipts from the sale of the bonds, and 8) information on the availability of resources that would enable Sebastian Furlan to claim the total amount of his indemnity and the role of the Minors Defense Counsel in this regard.

[12] The brief was presented by Andrea Parra, Director of PAIIS, and Diego Felipe Caballero Naranjo, María José Montoya Lara and Sebastián Rodríguez Alarcón, law students who are members of PAIIS.

[13] *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Objections.* Order of November 23, 2004, Series C No. 118 para. 74, and *Case of González Medina and relatives v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs.* Order of February 27, 2012, Series C. No. 240, para. 64.

regarding the failure to exhaust domestic remedies had been submitted to the Commission at the correct procedural time, prior to the Report on Admissibility. Second, the State argued that if the alleged victims considered that Law 23.982 established a method for the payment of compensation that was contrary to constitutional principles "they should have filed an extraordinary federal appeal, which was the correct proceeding to challenge the constitutionality of a national law." It added that "had this [appeal] been rejected [they would have had the possibility of filing] a motion for admission of a denied appeal."

17. Likewise, it indicated that "the mere fact that the alleged victims consider that a domestic remedy would be futile or ineffective for their claims does not demonstrate *per se* the inexistence or exhaustion of all effective domestic remedies." In this regard, the State indicated that the analysis of the effectiveness of the remedy cannot be made in an abstract manner, and highlighted that "clear evidence of the adequacy and effectiveness of the extraordinary appeal is provided by the decisions of the Supreme Court of Justice […] issue[d] prior to the judgment that granted compensation to Sebastián Furlan, [which] declared unconstitutional Law 23.982 based on the nature of specific cases which involved the need for medial treatment." It also emphasized that "the voluntary decision" not to file the "available and appropriate remedy cannot be interpreted as ineffectiveness of that remedy."

18. The Commission held that this preliminary objection is inadmissible "inasmuch as [the claims of the State] were analyzed in a timely manner" in the admissibility report, in which in which it applied the exception contemplated in Article 46(2) (c) of the Convention.

19. Furthermore, the Commission emphasized that: i) "in the ordinary remedies there was an unwarranted delay of thirteen years [...] in proceedings relating to serious permanent injuries to a child;" ii) "the State did not prove [...] how the extraordinary remedies that it considers should have been exhausted would resolve one of the main claims [...] which was the unwarranted delay," particularly taking into account that "the consideration and duration of the extraordinary appeal was discretionary"; and iii) "petitioners are not obliged to file extraordinary remedies that are not aimed at [...] remedying the alleged violation." Regarding the latter, the Commission pointed out that "the purpose of the judicial action" filed by Danilo Furlan was "to obtain compensation for [the] serious and permanent injuries" suffered by his son, as well as for "the duration of the ordinary proceedings." Finally, the Commission considered that the State's argument regarding the effectiveness of the extraordinary constitutional motion, to the extent that it might have been successful against the law as applied in other cases, "was time-barred" given that the State "had presented this argument for the first time before the Inter-American Court."

20. The representatives stated that this preliminary objection was raised by the State solely "with regard to the method of payment established by Law 23.982," and therefore "all violations of the Convention identified by the representatives [...] and by the Commission" are excluded. The representatives also held that this objection is formally inadmissible given that the State "abruptly changed [in the proceedings before the Court] the contents of the preliminary objection" filed before the Commission. In this regard, they indicated that in its arguments before the Commission, the State "claimed that an extraordinary appeal should have been lodged for the arbitrariness of the judgment" whereas before the Court the State argued that "an extraordinary appeal should have been filed regarding the unconstitutionality of Law 23.982."

21. Furthermore, they argued that the available domestic remedies that were appropriate and effective were exhausted "through the filing of the [...] appeal." Regarding

the State's claim that it was necessary to file a federal constitutional motion, the representatives argued that this remedy, in addition to being extraordinary, is "exceptional, discretionary and [is] not subject to a legal term for its resolution." They added that it is unreasonable to require the exhaustion of a remedy with those characteristics "after almost 10 years of processing in the lower courts" and given that this legal action "was aimed at obtaining comprehensive reparation for a disabled child."

22. Regarding the cases invoked in which the Supreme Court of Argentina declared the unconstitutionality of Law 23.982, the representatives stated that the extraordinary constitutional motion is not "the only legal instrument available to achieve a review of a law." They clarified that, on the contrary, any judge "has the capacity to declare unconstitutional a national law regardless of his level of jurisdiction." They added that this was accompanied by the "unacceptable and unlawful omission of failing to require the intervention of the Public Defender of Minors and Disabled Persons[, who] would have performed a key role [...] [and] even promoted the declaration of the unconstitutionality of Law 23.982." They further indicated that "for an extraordinary remedy to be admitted by the Supreme Court the party had the obligation to have questioned the constitutionality of the law at each stage of the proceedings."

Considerations of the Court

23. Article 46(1)(a) of the American Convention establishes that in determining the admissibility of a petition or communication submitted to the Inter-American Commission in conformity with Articles 44 or 45 of the Convention, it is necessary for the domestic remedies to have been pursued and exhausted, according to the generally accepted principles of International Law.[14] The Court recalls that the rule of prior exhaustion of domestic remedies is designed for the benefit of the State, since it seeks to exempt it from the need to respond before an international body for acts attributed to it before having the opportunity to resolve them through its own remedies.[15] This not only means that such remedies must formally exist, but that they must also be adequate and effective, as contemplated in the provisions of Article 46(2) of the Convention.[16]

24. Furthermore, this Court has consistently held that an objection to the exercise of the Court's jurisdiction based on alleged failure to exhaust domestic remedies must be filed at the appropriate procedural stage,[17] that is, during the admissibility of the proceedings before the Commission.[18]

25. In this regard, when claiming failure to exhaust domestic remedies, the State must indicate, at the proper procedural moment, which remedies must be exhausted and their effectiveness. The Court reiterates that the interpretation it has given for over two decades

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[14] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Order of June 26, 1987. Series C No. 1 para. 85, and *Case of González Medina and relatives v. Dominican Republic,* para. 19.

[15] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Order of July 29, 1988, Series C No. 4 para. 61, and *Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs,* Judgment of July 5, 2011. Series C No. 228 para. 27.

[16] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 63, and *Case of González Medina and relatives v. Dominican Republic,* para. 20.

[17] *Cf. Case of Velásquez Rodríguez v. Honduras, Preliminary Objections*, para. 88, and *Case of González Medina,* para. 21.

[18] *Cf. Case of Velásquez Rodríguez v. Honduras, Preliminary Objections*, para. 88, and *Case of Mejía Idrovo v. Ecuador*, para. 29.

to Article 46(1)(a) of the Convention is consistent with international law,[19] and that according to its own case law[20] and international jurisprudence,[21] it is not the Court's or the Commission's duty to identify *ex officio* the domestic remedies pending exhaustion. The Court highlights that it does not correspond to international bodies to correct the lack of accuracy of the State's claims.[22]

26. In this respect, the Court notes that State argued that the alleged victims should have filed an extraordinary appeal to indicate why "Law 23.982 would not meet constitutional principles." Specifically, the State indicated that this extraordinary remedy would have allowed "the intervention of the Supreme Court in an effort to maintain constitutional supremacy."

27. In this case, in the first place, the extraordinary constitutional motion is –as its name indicates- is of an extraordinary nature, and is intended to question a law and not to review a decision. In this regard, both the Commission and the representatives claimed that under the law in effect in Argentina the extraordinary motion that the State presented as appropriate is of a "discretionary" and "exceptional" character and "it is not subject to a term" for its admission or duration. Thus, the Court deems that the motion would not have been effective to remedy the alleged delay in the civil suit seeking compensation for Sebastián Furlan, an aspect which is one of the main disputes in this case. Indeed, the aforementioned remedy would have been limited to questioning the constitutionality of the norm that regulated the way in which the indemnity was paid. Thus, in the specific circumstances of this case, this Court considers that the function of that remedy within the domestic legal system was not effective in protecting the legal situation infringed in this case, therefore it cannot be considered as a domestic remedy that should have been exhausted.[23]

28. Also, the Court notes that during the admissibility proceedings before the Commission the State argued that if the alleged victim "considered that the decision was arbitrary and that it therefore constituted sufficient federal offense" he should have filed the "[e]xtraordinary [a]ppeal before the Supreme Court."[24] Consequently, the State considered that the alleged victim "opt [ed] to accept the decision of the Chamber," and therefore "it was left with no option but to begin the execution of the judgment and obtain approval of the settlement"[25] ordered as reparation.

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[19] *Cf. Case of Reverón Trujillo v. Venezuela*. *Preliminary Objections, Merits, Reparations and Costs.* Order of June 30, 2009. Series C No. 197 para. 22, and *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Order of November 20, 2009. Series C No. 207 para. 22.

[20] *Cf. Case of Velásquez Rodríguez v. Honduras,* para. 88, and *Case of Usón Ramírez v. Venezuela,* para. 22.

[21] *Cf.* European Court of Human Rights (hereinafter "ECHR"), *Deweer v. Belgium,* (No. 6903/75), Judgment of February 27, 1980, para. 26; *Case of Foti et al. v. Italy,* (No.7604/76; 7719/76; 7781/77; 7913/77), Judgment of December 10, 1982, para. 48, and *Case of de Jong, Baljet and Van den Brink v. The Netherlands,* (No. 8805/79 8806/79 9242/81), Judgment of May 22, 1984, para. 36.

[22] *Cf. Case of Reverón Trujillo*, para. 23, and *Case of Chocrón Chocrón v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 1, 2011. Series C No. 227 para. 23. See also ECHR, *Case of Bozano v. France,* Judgment of 18 December 1986, para. 46.

[23] Similarly, see *Case of Herrera Ulloa v. Costa Rica*, *Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107, para. 85.

[24] Brief of the State of Argentina of February 21, 2003 (file of appendices to the Report on Merits, volume IV, page 1791).

[25] Brief of the State of Argentina of February 21, 2003, page 1791.

29. Based on the foregoing, the Court notes that the arguments supporting the preliminary objection filed by the State before the Commission during the admissibility stage do not correspond to those put forward before the Court. The claims presented before the Commission relating to the failure to exhaust domestic remedies focused on the alleged failure to file an extraordinary appeal to correct a possible arbitrariness in the judgment of second instance of which Sebastián Furlan was the beneficiary and that established the amount of the reparation. In other words, the purpose of filing said remedy was to modify the amount awarded in compensation. On the other hand, the arguments presented by Argentina before the Court relate to the failure to exhaust this judicial remedy, but this time with a view to requesting the declaration of unconstitutionality of Law 23.982 in the specific case, and therefore the aim was to question a law regulating the payment of the compensation. Given that the State changed its argument regarding the purpose and aim of the remedy that allegedly had to be exhausted, the Court deems that the claims made in the response to the petition were not presented at the proper procedural stage before the Commission, and therefore one of the formal requirements for a preliminary objection based on failure to exhaust domestic remedies has not been met. [26] This renders unnecessary the analysis of other formal and material presumptions. [27]

30. Consequently, the Court dismisses the preliminary objection regarding failure to exhaust domestic remedies filed by the State of Argentina.

B) Lack of jurisdiction *ratione materiae* of the Inter-American Court to hear arguments regarding the consequences of the application of Law 23.982 of the debt consolidation regimen

Arguments of the parties and the Inter-American Commission

31. The State claimed that in the instant case "the reservation expressed by the State of Argentina [...] regarding its non-recognition of the jurisdiction of the bodies of the Inter-American system to intervene in matters related to [its] economic policy is applicable." It claimed that Law 23.982 is covered by said reservation, since it "regulates a specific regime of debt consolidation applicable to lawsuits against the State." It considered that the law that "regulates the payment by means of bonds in court judgments involving the State is part of the economic policy of the Government of the Republic of Argentina."

32. The State argued that although this reservation "was formulated generically in relation to Article 21 of the Convention[, ...] an interpretation in good faith of this sovereign decision must consider that it can be extended to other provisions of the Convention," otherwise this would imply that "the goal and purpose" of the aforementioned reservation "would be invalidated." The State claimed that the Commission's argument in its report is "contradictory," since it "first states that it will not perform an analysis of the method of payment through bonds, and then it base[d] its arguments on the application of said method." It added that the Court has established "a flexible system of reservations that

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[26] *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2010. Series C No. 218, para. 26, and *Case of González Medina and relatives v. Dominican Republic*, para. 24.

[27] *Case of Vélez Loor v. Panama*, para. 26, and *Case of González Medina and relatives v. Dominican Republic*, para. 24.

enables States to make any reservation [...] provided that it is not incompatible with its object and purpose." It indicated that "the reservation invoked is also applicable to Article 25" of the American Convention, insofar as "the object and purpose of the [reservation] presupposes the sovereignty of the State." Therefore, the State argued that the Court "does not have jurisdiction to examine the Commission's claims regarding the method of payment of the compensation ordered by the domestic judicial system."

33. The Commission argued that the Report on Admissibility "did not include among the rights potentially infringed that relating to Article 21 of the Convention." It added that "the State's argument to consider 'extendable' the interpretation of the reservation [...] to any other article of the Convention, in addition to presenting a clear lack of legal certainty, has no basis whatsoever in international law." The Commission also noted that "when examining the merits of the case it did not 'reintroduce' any argument concerning Article 21 of the Convention," therefore "it did not analyze at any point the 'economic policy' of the State, rather, it analyzed the [alleged] partial, delayed and thus ineffective decision issued by [the] judicial authorities."

34. The representatives argued that "the assignation of the reservation [made] by the State when it ratified the American Convention should not be extended." They indicated that "the minimal compensation granted" is not the subject of debate, nor is "the repeal of [the] exchange policy." They stated that the matter under consideration "is whether effective judicial protection [...] consists of having to wait for 25 years to receive comprehensive reparation." They considered that it would have been important "for the State, when filing [the preliminary] objection, to have specified the content and scope that it sought to grant to the concept of the Government's economic policy' in relation to the case." They added that the State "has failed to establish the required limits to make it possible to understand how the reserve invoked should apply in this case." In other words, "it has not demonstrated why the facts denounced affect[ed] the broader issue of the national economic policy referred to in the reservation." Finally, the representatives argued that "invoking a reservation whose interpretation does not provide certainty regarding the limitation of rights, cannot result in the limitation of [this] Court's jurisdiction."

Considerations of the Court

35. With regard to the arguments presented by the parties, the Court notes that there are two disputes, namely: i) the extension of the reservation made to Article 21 of the American Convention to the arguments presented by the Inter-American Commission in relation to Article 25 thereof, and ii) the direct application of the reservation to the arguments made by the representatives in relation to the alleged violation of the right to property in the instant case. In this regard, the Court deems it necessary to define the scope of the reservation made by the State of Argentina in order to determine whether it is possible to extend it to other articles of the Convention, and to decide whether it is applicable to this case.

36. First, the Court notes that the text of the reservation made by Argentina establishes the following:[28]

[28] In the instrument of ratification dated August 14, 1984, and deposited with the General Secretariat of the OAS on September 5, 1984, the Government of Argentina recognizes the competence of the Inter-American Commission on Human Rights and the jurisdiction of the Inter-American Court of Human Rights for an indeterminate period and on condition of reciprocity on all cases related to the interpretation or application of the American Convention, with the partial reservation and bearing in mind the interpretative statements contained in the instrument of ratification.

> Article 21 is subject to the following reservation: "The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international Court. Neither shall it consider reviewable anything the national courts may determine to be matters of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation'."

37. The Court has established criteria regarding the interpretation of reservations to the Convention. [29] First, when interpreting the reservations the Court shall, above all, apply a strictly textual analysis. Second, the object and purpose of the corresponding treaty[30] shall be duly considered, which in the case of the American Convention concerns "the protection of the basic rights of human beings."[31] In addition, the reservation must be interpreted in accordance with Article 29 of the Convention. [32]

38. From a textual analysis of the reservation made by Argentina at the time of ratification of the American Convention, the Court notes that it was exclusively stipulated for Article 21 of the treaty. Consequently, it is clear that the State did not wish to extend the scope of that reservation to other rights or precepts enshrined in the Convention.

39. With regard to the object and purpose of the treaty, the Court has established in its case law that "modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of a traditional nature concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the fundamental rights of human beings. Thus, by adopting these human rights treaties, States are subject to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction." [33]

40. In addition, the Court reiterates that, in light of Article 29 of the American Convention, a reservation should not be interpreted as restricting the enjoyment and exercise of the rights and freedoms recognized in the Convention to a greater extent than that set forth in the reservation itself.[34] Therefore, the Court concludes that from the textual interpretation, and taking into account the purpose and object of the treaty, the application of the reservation made to Article 21 of the Convention clearly cannot be extended to the arguments presented by the Inter-American Commission for the alleged violation of Article 25 of that treaty.

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[29] *Cf. Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations and Costs. Judgment of* November 20, 2007. Series C No. 169, para. 15 and *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182, para. 217. See also, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75).* Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 35, and Restrictions to the Death Penalty (Arts. 4.2 and 4.4 American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paras. 60/66.

[30] *Cf. Case of Boyce et al. v. Barbados;* para. 15. See also Article 75 of the American Convention and Article 19 of the Vienna Convention on the Law of Treaties indicating that reservations to a treaty must be compatible with the object and purpose of the treaty).

[31] *Cf. Case of Boyce et al. v. Barbados,* para. 15; Advisory Opinion OC-2/82; para. 29, and Advisory Opinion OC-3/83, para. 65.

[32] *Cf. Case of Boyce et al. v. Barbados*, para. 15; Advisory Opinion OC-3/83, para. 66.

[33] Advisory Opinion OC-2/82; para. 29.

[34] *Cf. Case of Boyce et al. v. Barbados*, para. 15; Advisory Opinion OC-3/83, para. 66.

41. Moreover, regarding the arguments presented by the representatives in connection with an alleged violation of Article 21 of the Convention, the Court notes that the first clause of the text of the reservation only excludes from the Court's jurisdiction those issues "relating to the government's economic policy." Meanwhile, the second clause of the reservation indicates that the Court cannot consider cases in which domestic courts have issued a ruling based on criteria such as "public utility," "social interest" or "fair compensation." While it is true that the text of the reservation does not specify the main components for determining which "questions are inherent to the Government's economic policy," the Court considers that the first line of this reservation should be understood as a limitation for the organs of the Inter-American System to review general economic policies related to aspects of the right to property enshrined in Article 21 of the American Convention. Regarding the second clause of the reservation, the State did not submit specific arguments, and therefore the Court considers it unnecessary to make a literal interpretation thereof.

42. In the instant case, the representatives' arguments concerning the alleged violation of Article 21 are based on the fact that: i) "the application of the method of payment established by Law 23.982 and the delay in the process [of] execution of the judgment resulted in non-compliance with a compensation award recognized by a firm court decision, [therefore] it must be concluded that a right acquired by the beneficiary of the compensation was infringed," and ii) "the breach of the right to property derive[d] from the disregard of a decision issued by a judicial body, a resolution that guaranteed a compensation credit that makes clear provision for reparation and subsistence."

43. In this regard, the Court considers that the representatives of the alleged victims are not calling for the review of an issue inherent to an economic policy adopted by the State. On the contrary, the Court notes that the arguments regarding the alleged violation of Article 21 of the Convention, in this case, are related to alleged infringements of said right deriving from the judicial proceedings and their execution, which will be examined in the analysis of the merits of the case (*infra* para. 206-223). Accordingly, the Court concludes that in the instant case the reservation made by Argentina is not applicable, insofar as the Court has not been asked to review an economic policy of the government.

44. Therefore, the Court rejects the preliminary objection of lack of jurisdiction *ratione materiae* of the Court to consider arguments concerning the consequences of the implementation of Law 23.982 of the debt consolidation regime.

C) "Preliminary Objection regarding the violation of the State of Argentina's right to defend itself during the substantiation of the case before the [Inter-American] Commission"

Arguments of the parties and of the Inter-American Commission

45. The State argued that during the proceedings before the Commission "its right to defend itself was violated," given that the Report on Admissibility "only made reference to Articles 8, 19, 25 and 1(1) of the Convention" and the Report on Merits concluded that the State was also responsible for the violation of the right to personal integrity enshrined in Article 5(1) of the Convention." In this regard, it noted that "it was deprived [...] of any possibility of submitting arguments to defend itself with regard to Article 5" of the Convention, and that "the circumstance that the facts comprising the alleged violation were analyzed by the Commission in relation [... to] Article 8[,] is not equivalent to the State having had the opportunity to submit its defense with regard to the right to personal integrity." It indicated that "agreeing to proceedings of this nature would give States the

daunting task of having to imagine and respond to [...] alleged violations based on facts [or claims] not submitted by the petitioners or included in the reports on admissibility." Moreover, it indicated that "erroneously invoking of the principle of *iura novit curia* cannot correct a State's situation when at the end of the proceedings before the C[ommission] it is found responsible for a violation on which it never had the chance to defend itself."

46. The Commission pointed out that Article 46 of the Convention "only establishes that, at this stage, the Commission must determine whether the petition meets the established admissibility requirements." It added that the usual practice of the System's organs has been "to perform an analysis of the facts submitted for its consideration from a perspective that is not limited to the legal provisions invoked [...] but that includes those that are relevant and applicable to those facts." It indicated that since the beginning of the processing of the petition "Argentina had knowledge of the 'physical and mental' injuries alleged by the petitioner to his detriment and that of his family due to the actions of the State." It indicated that "after the Report on Admissibility, the State provided [...] the court records [...] based on [which], and according to facts that the State was fully aware of since the initial petition, the Commission determined that there were contents and significant facts upon which to base a judgment [with regard] to the personal integrity of the members of the Furlan family." The Commission claimed that it took into account that: i) "the State had full knowledge of all of the allegations and evidence submitted in this regard"; ii) the State "had numerous opportunities to respond"; and iii) "in many cases, during the processing [of a matter] information arises [that] increasingly confirms the consequences suffered by the family."

47. The representatives indicated that "there is a [c]orrelation between the requests of the alleged victims, the Report on Admissibility and the Report on Merits regarding the violation of the right to personal integrity." They argued that the alleged victims had expressed "with absolute clarity" since the early stages of the proceedings before the Commission "the impairments suffered to their personal integrity," considerations that were "included in the Report on Admissibility." Based on the foregoing, the representatives stated that "in the context of these factual assertions, and in application of the principle of *iura novit curia*, the Commission decided to examine [...] 'the infringement of the right to personal integrity established in Article 5(1), as a result of the unwarranted delay in which the State incurred' [...] both with regard to Sebastián and his family." They concluded that "the principles of the right of rebuttal, procedural equality and legal certainty were complied with throughout the processing of the case" before the Commission.

Considerations of the Court

48. When a preliminary objection is based on questioning the actions of the Commission in relation to proceedings before it, the Court has previously indicated that the Inter-American Commission has autonomy and independence in the exercise of its mandate, as established by the American Convention, and particularly in the exercise of functions within its jurisdiction regarding the processing of individual petitions as set forth in Articles 44 to 51 of the Convention. However, in matters under its consideration, the Court has the authority to perform a control of due process of the actions of the Commission.[35] This does not necessarily presuppose reviewing the proceedings carried out before it, except in the event that one of the parties claims with justification that a grave error has occurred which

[35] *Cf. Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights (Arts. 41 and 44 of the American Convention on Human Rights).* Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, operative paragraphs one and three; and *Case of Grande v. Argentina. Preliminary Objections and Merits.* Judgment of August 31, 2011. Series C No. 231, para. 45, and *Case of González Medina and relatives v. Dominican Republic*, para. 28.

infringes its right to defend itself.[36] Also, the Court must preserve a fair balance between the protection of human rights, its ultimate goal, and the legal certainty and procedural equality that ensure the stability and reliability of international protection.[37]

49. The Court has indicated that the processing of individual petitions is governed by guarantees that ensure that parties exercise the right to defend themselves in the proceedings. These guarantees are: a) those relating to the conditions for admissibility of the petitions (Articles 44 to 46 of the Convention),[38] and b) those concerning the principle of right of rebuttal (Article 48 of the Convention)[39] and procedural equality. In addition, it is necessary take into account the principle of legal certainty (Article 38 of the Rules of Procedure of the Commission).[40]

50. Likewise, any party asserting that an action by the Commission during the proceedings before it was carried out with a grave error that affected the right to defend itself must clearly demonstrate such infringement. Therefore, in this regard, a complaint or difference of criteria in relation to the actions of the Inter-American Commission is insufficient.[41]

51. In this case, the Court, as a judicial body, will proceed to review the prior actions and decisions of the Commission in order to ensure the validity of the requirements of admissibility and the principles of right to rebuttal, procedural equality and legal certainty.[42]

52. First, regarding the inclusion of new rights in the Report on Merits that were not previously listed in the Commission's Report on Admissibility, the Court confirms that in the American Convention and in the Rules of Procedure of the Inter-American Commission there is no regulation indicating that all of the rights allegedly violated must be established in the Report on Admissibility. In this regard, Articles 46[43] and 47[44] of the American Convention

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[36] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C No. 184, para. 42, and *Case of González Medina and relatives v. Dominican Republic,* para. 28.

[37] *Cf. Case of Cayara v. Peru. Preliminary Objections.* Judgment of February 3, 1993. Series C No. 14, para. 63; *Case of Baena Ricardo et. al. v. Panama. Preliminary Objections.* Judgment of November 18, 1999. Series C No. 61, para. 42 and *Case of González Medina and relatives v. Dominican Republic,* para. 28.

[38] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections,* para. 85; *Case of Grande v. Argentina, Preliminary Objections and Merits.* Judgment of August 31, 2011. Series C No. 231, para. 56.

[39] Advisory Opinion OC-19/50 and *Case of Grande v. Argentina,* para. 56.

[40] *Cf. Case of Grande v. Argentina,* para. 56 and Advisory Opinion OC-19/05, para. 27.

[41] *Cfr. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 32, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 27.

[42] *Case of Grande v. Argentina*, para. 46, and *Case of González Medina and relatives v. Dominican Republic*, para. 34.

[43] Article 46 of the Convention establishes that: 1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; b) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment; c) that the subject of the petition or communication is not pending in another international proceeding for settlement; and d) that, in the case of Article 44, the petition contains the name, nationality, profession, domicile and signature of the person or persons or of the legal representative of the entity lodging the petition. 2. The provisions of paragraphs 1.a and

exclusively establish the requirements whereby a petition may be declared admissible or inadmissible, but do not impose on the Commission the obligation to determine which rights will subject to the proceedings. Indeed, Article 48 of the Convention allows the Commission, after the petition has been admitted, if necessary, "to carry out an investigation, for the effective conduct of which [it shall] request, and the States concerned shall provide, all necessary facilities."[45] In this regard, the Court considers that the rights specified in the Report on Admissibility are the result of a preliminary assessment of the petition in progress, hence the possibility of including other rights or articles allegedly violated at subsequent stages of the proceedings is not limited, provided that the State's right to defend itself is protected in the factual background of the case under consideration.

53. Furthermore, the possibility of changing or altering the legal description of the facts of a specific case is permitted in the context of a process before the Inter-American System. This is evident in the Court's consistent case law, which allows alleged victims and their representatives to invoke the violation of rights other than those included in the petition or in the report on merits, provided that these are related to the facts contained in said document, given that the alleged victims are entitled to all the rights enshrined in the Convention.[46]

54. Similarly, the Court reiterates the points made in the case of the *Moiwana Community v. Suriname*, in which the State at one time argued, as a preliminary objection, that its right to defend itself was infringed given that the Commission "determined other violations different from those for which the case was admitted." In that case the Court indicated that the Commission's conclusions regarding alleged violations of the American Convention are not binding upon the Court. [47] Similarly, in the case of *Apitz Barbera et al. v. Venezuela* the Court indicated that "the decisions on inadmissibility that the Commission takes based on Article 47 b) and c) of the Convention are *prima facie* juridical assessments that do not limit the Court's competence to rule on a point of law that the Commission has only analyzed in a preliminary manner." [48]

55. Secondly, the Court reiterates that the principle of *iura novit curia*, which is solidly supported by international case law, allows the Court to examine a possible violation of the provisions of the Convention that have not been alleged in the briefs submitted by the parties, provided they are given the opportunity to express their respective positions in

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1.b of this article shall not be applicable when: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

[44] The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: a) any of the requirements indicated in Article 46 has not been met; b) the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention; c) the statements of the petitioner or of the State indicate that the petition or communication is manifestly groundless or obviously out of order; and d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

[45] Article 48(d) of the American Convention and Article 39 of the Rules of Procedure of the Inter-American Commission.

[46] *Cf. Case of the Five Pensioners v. Peru, Merits, Reparations and Costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of González Medina and relatives v. Dominican Republic*, para. 242.

[47] *Cf. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 15, 2005. Series C No. 124, para. 63.

[48] *Cf. Case of Apitz Barbera et al. v. Venezuela*, para. 189.

relation to the supporting facts. [49] In this regard, the Court has applied this principle since its first order and on several occasions[50] to declare the infringement of rights that had not been directly alleged by the parties, but that were inferred from the analysis of the facts in dispute. Therefore, this principle authorizes the Court to assess the situation or legal matter in dispute in a manner different to that of the parties, provided that it is strictly based on the facts of the case. [51]

56. In this case, the Court notes that the State had knowledge of the facts supporting the alleged violation of Article 5 of the Convention to the detriment of Sebastián Furlan and his family, given that Mr. Danilo Furlan, since his initial petition, referred to the alleged violations suffered both by his son and his family due to the alleged delay in the proceedings.[52] Subsequently, and during the stage of admissibility before the Commission, Mr. Danilo Furlan indicated, on several occasions, the facts or violations that allegedly occurred, namely: i) "while the brain injury to [his] son, Sebastián, is serious, the collateral damage to the rest of the family, his mother, [two] brothers and [him] are equally serious [given that] [their] life gets increasingly complicated, with many psychological, emotional and economic problems, this family is like a sinking ship";[53] ii) "now they a[re] all separated from each other, each with his own psychological trauma"; [54] iii) Sebastián "has a life full of limitations, full of problems and uncertainties, as well as [him] and his brothers";[55] and iv) "this should be considered a crime, since it will definitely leave irreparable impacts for the rest of their lives, for Sebastián as well as for each of his brothers and parents, who are also victims in this disintegrated, humiliated and impoverished family." [56] The Court confirms

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49 *Cf. Caso Velásquez Rodríguez*, para. 163 and *Case of Vélez Loor v. Panama*, para. 184.

50 By way of example, in the following cases, *inter alia*, the infringement of rights not invoked by the parties were declared, in application of the *iura novit curia* principle: i) in the case of *Velásquez Rodríguez v. Honduras* the violation of Article 1(1) of the Convention was declared; ii) in the case of *Usón Ramírez v. Venezuela* the violation of Article 9 of the American Convention was declared; iii) in the case of *Bayarri v. Argentina* the violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture were declared: iv) in the case of *Heliodoro Portugal v. Panama* the infringement of Article I of the Convention on Forced Disappearance was declared, in relation to Article II of said instrument; v) in the case of *Kimel v. Argentina* the violation of Article 9 of the American Convention was declared; vi) in the case of *Bueno Alves* the infringement of Article 5(1) of the American Convention was declared to the detriment of the relatives of Mr. Bueno Alves; vii) in the case of the *Ituango Massacres v. Colombia* the violation of Article 11(2) of the Convention was declared; and viii) in the case of *Sawhoyamaxa Indigenous Community v. Paraguay* the infringement of Article 3 of the American Convention was declared.

51 *Cf. Case of Bueno Alves v. Argentina. Merits, Reparations and Costs.* Judgment of May 11, 2007. Series C No. 164, para. 70.

52 Specifically, in the initial petition he stated that "in these 13 years and as a result of th[e] accident […] many sad and painful [situations] happened in [his] family, everything fell apart, […] there was a divorce, because of the tension, desperation and anguish which caused real chaos in the marriage, a daughter left the house, fights took place [because of which] (the whole family) we[nt] to a psychiatric center." Brief of July 18, 2001 (file of appendices to the Report on Merits, volume IV, page 1978).

53 Brief submitted by Danilo Furlan on January 4, 2002 (file of appendices to the report on merits, volume IV, page 1925).

54 Brief submitted by Danilo Furlan on January 4, 2002, page 1925.

55 Brief submitted by Danilo Furlan on July 24, 2002 (file of appendices to the Report on Merits, volume IV, page 1900).

56 Brief submitted by Danilo Furlan on October 28, 2002 (file of appendices to the Report on Merits, volume IV, page 1851).

that the briefs containing these statements were forwarded to the State[57] during the admissibility stage before the Commission.

57. The Court further notes that the Inter-American Commission had full access to the court file after the Report on Admissibility was issued,[58] when it was forwarded by the State, and therefore it was not until that time that the Commission had all the evidence to establish the specific facts of this case.

58. Regarding the arguments presented by the State, according to which the Court had already established in the judgment of the case of *Grande v. Argentina* that the application of the *iura novit curia* principle by the Commission would be inadmissible. The Court recalls that in that case, the preliminary objection of the violation of the State's right to defend itself was admitted, "due to the change of the purpose of the petition in the Report on Admissibility and the subsequent application by the Commission of the procedural preclusion of the State's claims regarding the admissibility requirements in the Report on Merits, the Commission omitted verifying the eligibility requirement set out in Article 46(1)(b) of the Convention regarding criminal proceedings," [59] in other words, the requirement that the initial petition must be "lodged within a period of six months from the date on which the party alleging violation to his rights was notified of the final judgment." In addition, this case included reference to facts that were outside the Court's temporal jurisdiction and involved two different proceedings (one criminal and one administrative). Therefore, the Court finds no link between the ruling in the case cited by the State and the present case.

59. Consequently, the Court concludes that the State was aware of the facts supporting the alleged violation of Article 5 of the Convention to the detriment of Sebastián Furlan and his family from the outset of the proceedings before the Commission, and could therefore have expressed its position, had it considered it pertinent. In this sense, the Commission could apply the *iura novit curia* principle or consider another classification of the same facts, without this implying a violation of the State of Argentina's right to defend itself.

60. Based on the foregoing, the Court dismisses the preliminary objection of violation of the right to defend itself in the proceedings before the Inter-American Commission filed by the State of Argentina.

IV
JURISDICTION

61. The Inter-American Court has jurisdiction to hear this case, under the terms of Article 62(3) of the American Convention on Human Rights, given that Argentina is a State Party to the Convention[60] since September 5, 1984 and accepted the contentious jurisdiction of the Court on that same date.

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[57] Communication of the Inter-American Commission of December 16, 2002 (file of appendices to the Report on Merits, volume IV, page 1830).

[58] Communication of the Inter-American Commission of July 17, 2008 (file of appendices to the Report on Merits, volume III, page 1393) and Communication received from the Permanent Mission of the Argentine Republic before the OAS of February 23, 2009 (file of appendices to the Report on Merits, volume III, page 1315).

[59] *Cf. Case of Grande v. Argentina*, para. 61

[60] The Court has already referred to the reservation made by the State of Argentina to Article 21 of the American Convention (*supra* paras. 36 to 44).

V
EVIDENCE

62. Based on the provisions of Articles 46, 47 and 50 of the Court's Rules of Procedure, as well as on its case law regarding evidence and its assessment,[61] the Court will consider and assess the documentary evidence forwarded by the parties at different procedural stages, the statements, testimonies and expert opinions provided through affidavits and in the public hearing before the Court, as well as the evidence requested by the Court (*supra* para. 11) to facilitate adjudication. In doing so, the Court will adhere to the principles of sound judgment, within the relevant regulatory framework.[62]

A) Documentary, testimonial and expert witness evidence

63. The Court received several documents submitted as evidence by the Inter-American Commission, the representatives and the State, attached to their main briefs. Similarly, the Court received the affidavits of: the alleged victim Danilo Pedro Furlan; the witnesses María Teresa Grossi and Violeta Florinda Jano, and expert witnesses Estela del Carmen Rodríguez and Hernán Gullco. Regarding the evidence presented at the public hearing, the Court heard the testimony of the alleged victim Claudio Furlan and the expert witnesses Laura Beatriz Subies, Gustavo Daniel Moreno and Alejandro Morlachetti.[63]

B) Admission of evidence

B.1) Admission of documentary evidence

64. In this case, as in others, the Court recognizes the evidentiary value of the documents submitted by the parties and the Commission at the appropriate procedural stage, which have neither been contested nor challenged, and the authenticity of which has not been questioned.[64] The documents requested by the Court as evidence to facilitate adjudication of the case (*supra* para. 11) are included in the body of evidence, pursuant to the provisions of Article 58 of the Rules of Procedure.

65. The Court decides to admit those documents that are complete, or at least those whose source and publication date can be verified, and will assess them taking into account the entire body of evidence, the State's arguments and the rules of sound judgment. [65]

66. Likewise, with regard to certain documents referred to by the parties by means of their electronic links, the Court has established that if a party provides at least the direct electronic link to the document cited as evidence, and it is possible to access this document, the legal certainty and the procedural balance will not be affected, because its location is

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[61] *Cf. Case of the White Van (Paniagua Morales et. al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 69 to 76, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations* Judgment of June 27, 2012. Series C No. 245, para. 31.

[62] *Cf. Case of the White Van (Paniagua Morales et. al.) v. Guatemala,* para. 76, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador para. 31.*

[63] The objects of all of these declarations are established in the Order of the President of the Court of January 24, 2012. Available at: http://corteidh.or.cr/docs/asuntos/furlan.pdf

[64] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 140, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 35.

[65] *Cf. Caso Velásquez Rodríguez v. Honduras. Merits,* para. 146, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 36.

immediately available to the Court and to the other parties.[66] In this case, no objections or observations were made by the other parties or the Commission regarding the content and authenticity of the documents.

B.2) Admission of the statements of the alleged victims, and of testimonial and expert evidence

67. With regard to the statements of the alleged victims, witnesses and experts rendered at the public hearing and through affidavits, the Court considers these pertinent only insofar as they relate to the purpose defined by the President of the Court in the Order requiring them (*supra* para. 10). These statements will be assessed in the corresponding chapter, together with the entire body of evidence, taking into account the observations made by the parties. [67]

68. According to the case law of this Court, the statements made by the alleged victims cannot be assessed separately but as part of the entire body of evidence in the proceedings, since they are useful insofar as they may provide more information on the alleged violations and their consequences.[68] Based on the foregoing, the Court admits these statements (*supra* para. 10 and 63), which shall be assessed according to the criteria indicated.

69. In relation to the affidavits, the State argued that "these should be limited to the purpose of this case, in other words, to the domestic judicial proceedings and, consequently, all statements related to the direct consequences of the accident suffered by Sebastián Furlan shall be excluded from analysis" by the Court. In this regard, the Court notes that the State's argument was presented in a general manner, which makes its analysis difficult. It is not clear what the State means by the expression "direct consequences of the accident," bearing in mind that the facts of the case are related to different proceedings instituted as a result of said accident. Consequently, the Court considers that the State did not present sufficient arguments for it to reject the admissibility of those affidavits. Nevertheless, the Court will assess the argument and will ensure that the affidavits are limited to the purpose defined by the President (*supra* para. 10).

70. The State also claimed that the expert witness Subies "carried out specific assessments based on her own subjective opinion of the Furlan case." It argued that she "spoke at length about her personal experience, her litigation work and stated without grounds that the number of attorneys specializing in disability matters in the Republic of Argentina is not sufficient," which "is not supported by statistics or studies and is not related to the purpose of the witness's statement." It argued that the aspect related to the purpose of the expert report on "the possibilities of public health coverage" was not "presented in a complete or exhaustive manner" and, in particular, that no reference "was made at any time to the 'Incluir' Salud Federal Health Program (formerly PROFE), which was the appropriate health system to provide comprehensive care to Sebastián Furlan." In this regard, the Court

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[66] *Cf. Case of Escué Zapata v. Colombia. Merits, Reparations of Costs.* Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 37.

[67] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 43. In this regard, the Court recalls the observation made in the order summoning this case, in which it was determined that Sebastián Furlan's statement – forwarded by the representatives on video- constitutes documentary evidence and, accordingly, shall be assessed in due course, within the context of the existing body of evidence and according to the rules of sound judgment. *Cf. Case of Furlan and Family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of January 24, 2012. Available at: http://corteidh.or.cr/docs/asuntos/furlan.pdf

[68] *Cf. Case of Loayza Tamayo v. Peru. Merits,* para. 43, and *Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 26, 2012. Series C No. 244, para. 27.

notes that the aspects challenged by the State refer to the merits of the case and to the evidentiary value of the expert witness's statement. These issues will be considered, as appropriate, in the relevant sections of the Judgment, in the specific context of the purpose for which she was summoned and taking into account the points made by the State.

VI
FACTS

1. Sebastián Furlan's Accident

71. Sebastián Claus Furlan lived in the district of Ciudadela, Buenos Aires Province, with his father Danilo Furlan, his mother Susana Fernández, his sister Sabina and brother Claudio Furlan.[69] Ciudadela Norte is "a medium-low class and low class area, located 500 meters from one of the poorest and most dangerous neighborhoods of the Buenos Aires Conurbano[70] (suburbs) known as 'Fuerte Apache.'"[71] Sebastián Furlan's family had limited financial resources.[72]

72. On December 21, 1988, at the age of 14,[73] Sebastián Furlan entered a field located near his home, property of the Argentinean Army, in order to play.[74] The grounds were an abandoned military training circuit, where there were still dirt mounds, "hurdles and obstacles made with *quebracho* railroad ties (wooden planks)" and the remains of an infantry track that was in a state of disrepair.[75] There was no perimeter wall, wire fencing, or any other type of barrier to block or prevent access to the property, and therefore "it was used by children for playing different games, relaxing and practicing sports."[76] Once he was on the premises, Sebastián attempted to hang from "a crossbeam" on one of the pieces of

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69 *Cf.* Testimony rendered by Claudio Edwin Furlan at the public hearing held in the instant case.

70 The word "Conurbano" is equivalent to "suburbs" in some countries of the region.

71 Social-environmental report by Marta Celia Fernández, appendices to the brief containing pleadings and motions, volume V, page 2460.

72 In this regard, the civil proceeding for damages granted Sebastián Furlan "the benefit of litigating without costs." *Cf.* Legal plea for benefit of litigation without costs (file of appendices to the brief of pleadings and evidence, volume V, appendix VII, pages 2264 to 2323). Likewise, Mr. Danilo Furlan stated that: i) "Nobody told me about the special rehabilitation places. Maybe because those places were expensive and they realized that I probably couldn't afford them;" ii) "I wasn't able to give him [Sebastián Furlan] everything he needed. I did not have the means or the money;" and iii) "I was always looking for opportunities and trying to buy old cars that were being sold of or that had a lower price for some reason. I would then try to fix them up a little to sell them and make a little profit from the sale. That job required my full-time efforts, since I had to go to different places at all times, talk to a lot of people and find sellers and buyers. Having to dedicate myself fully to Sebastián and not having the means to acquire professional and specialized help I had to put my job aside." Statement by Danilo Furlan before a Notary Public (Merits file, volume II, pages 684 to 686).

73 Sebastián Furlan was born June 6, 1974. *Cf.* Birth certificate of Sebastián Claus Furlan of June 7, 1974 issued by the General Directorate of Civil Registry (file of appendices to the report, volume I, appendix 6, page 87).

74 *Cf.* Judgment issued by the National Court No. 9 of Civil and Commercial Matters of December 7, 2000 (file of appendices to the report, volume I, appendix 6, page 518).

75 *Cf.* Judgment issued by the National Court No. 9 of Civil and Commercial Matters of December 7, 2000 (file of appendices to the report, volume I, appendix 6, page 519).

76 *Cf.* Judgment issued by the National Court No. 9 of Civil and Commercial Matters page 519.

equipment, whereupon a beam weighing approximately 45 to 50 kilograms fell on him, hitting him hard on the head and immediately knocking him unconscious.[77]

73. Sebastián was admitted into the intensive care unit of the Hospital Nacional Profesor Alejandro Posadas (hereinafter "Posadas National Hospital"), and diagnosed with "encephalic cranial trauma with loss of consciousness, in a Grade II-III comatose state, with a fractured right parietal bone."[78] At that time he was taken to the operating room to undergo surgery for a "right extradural hematoma."[79] After the operation, "Sebastián Furlan remained in a Grade II coma until December 28, 1988 and then in a vigil coma until January 18, 1989.[80] While undergoing intensive therapy "two encephalic computerized tomography scans were taken which [showed] cerebral and brain stem edema, [and] electroencephalograms and evoked visual and brain stem potentials were performed which show[ed] slow reaction time."[81]

74. On January 23, 1989[82] Sebastián Furlan was discharged to receive outpatient treatment,[83] with difficulties in his speech and in the use of his upper and lower limbs,[84] "with a diagnosis that included cranial trauma with loss of consciousness […,] right temporo-parietal fracture, contusion of the brain and of the mesencephalic stem."[85] Based on this diagnosis, the doctors ordered continued outpatient rehabilitation treatment.[86]

75. Prior to the accident Sebastián Furlan was an ordinary student in his first year of high school at the Escuela de Education Técnica No. 4 (National Technical Education School) of Ciudadela.[87] After school he participated in a basketball team,[88] swam at Club Ciudadela Norte[89] and practiced karate at the Private Oriental Institute (Shinkai Karate-Do School).[90]

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77 *Cf.* Judgment issued by the National Court No. 9 of Civil and Commercial Matters, pages 518 and 519.

78 *Cf.* Expert opinion of Doctor Juan Carlos Brodsky of November 15, 1999 (file of appendices to the report, volume I, appendix 6, page 452).

79 *Cf.* Expert opinion of Doctor Juan Carlos Brodsky, page 452.

80 *Cf.* Expert opinion of Doctor Luis Garzoni (file of appendices to the report, volume I, appendix 6, page 424).

81 *Cf.* Expert opinion of Doctor Juan Carlos Brodsky, page 452.

82 *Cf.* Expert opinion of Doctor Juan Carlos Brodsky, page 452.

83 *Cf.* Expert opinion of Doctor Luis Garzoni, page 425.

84 *Cf.* Order issued by the National Court No. 9 of Civil and Commercial Matters, page 517.

85 *Cf.* Expert opinion of Doctor Luis Garzoni, page 425.

86 *Cf.* Report submitted by the "Manuel Rocca" Rehabilitation Hospital on July 20, 2011 (file of appendices to the brief of pleadings and evidence, volume V, page 2478).

87 *Cf.* Communication of the Escuela de Educacion Secundaria Técnica No. 4 Tres de Febrero of June 28, 2011 (file of appendices to the brief of pleadings and evidence, volume VI, page 2619) and communication of the Escuela de Educacion Secundaria Técnica No. 4 Tres de Febrero of March 3, 1998 (file of appendices to the written brief containing pleadings, volume VI, page 2619)

88 *Cf.* Communication of the Regional Basketball Federation of the Federal Capital of June 13, 2011 (file of appendices to the brief of pleadings and evidence, volume V, page 2154) and communication of the Regional Basketball Federation of Federal Capital of July 14, 2011 (file of appendices to the brief of pleadings and evidence, volume V, page 2163).

89 *Cf.* Brief issued by the Club Ciudadela Norte of March 2, 1998 (file of appendices of the report, volume I, appendix 6, page 244).

However, after the accident he had to stop all sports activities.[91] The trauma and comatose state led to an "organic post-traumatic mental disorder and an abnormal neurotic reaction with obsessive compulsive manifestations [,] with personality deterioration [,] which entails a significant degree of mental disability and irreversible disorders of the cognitive and motor area."[92] All of these aftereffects are permanent.[93]

76. On August 31, 1989 Sebastián Furlan attempted suicide by throwing himself from the second floor of a building near his home. Consequently, he was readmitted to the Posadas National Hospital for observation due to "severe adolescent depression."[94] On that occasion, the diagnosis was "multiple traumas with momentary loss of consciousness […], speech alterations, dizziness, paraparesis, signs of irritation of the meninges, sensory preservation, dyslalia [and] ataxia."[95] The clinical description indicated that for several days he had been experiencing crying spells, did not want to go to school, expressed feelings of worthlessness and had thoughts of suicide. The diagnosis also indicated that this was the second suicide attempt by Sebastián Furlan, [96]who had previously inflicted injuries on himself. [97]

77. Although Sebastián was able to return to school during the second term of 1990, he suffered severe impairment to his speech, motor skills and profound changes in his behavior that disconcerted the teachers and, from the point of view of the school, hindered his normal development and learning and that of the other students.[98] For example, the brief dated March 3, 1998 issued by the Escuela de Education Técnica No. 4 in the civil suit for damages, described Sebastián Furlan's behavior at that school during two consecutive academic cycles: "[f]irst year second term" (attended in 1988) and "second-year first term" (attended "until the beginning of May" 1990). In its observations regarding the first term, the school noted that "there were isolated episodes of behavior in violation of the school rules that were of little significance and with features that are common to students that enter the school, until their subsequent adaptation." However, the report for the second academic cycle, after the accident, indicated "severe changes in his speech, motor skills and profound changes [in his] conduct were observed, which was disconcerting to the school staff and hampered the normal course of learning for this student [Sebastián Furlan] and for others. As evidence of these changes they mentioned a number of events that occurred between April 11, 1990 and April 24 of that year, emphasizing the following due to their severity: i) "[d]isciplinary problems at the beginning of classes" as well as "late arrivals" and "consecutive days missed"; ii) "aggressive behavior" such as "horseplay" or "hitting a female student"; iii) "disrespect for female students" such as "kissing one female student on

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90 *Cf.* Graduation Certificate issued by the Escuela Shinkai Karate-Do of August 30, 1987 (file of appendices of the report, volume I, appendix 6, page 104).

91 *Cf.* Expert opinion of Doctor Luis Garzoni, page 428.

92 *Cf.* Order issued by the National Court No. 9 of Civil and Commercial Matters, page 526.

93 *Cf.* Expert opinion of Doctor Juan Carlos Brodsky, page 256.

94 *Cf.* Expert opinion of Doctor Luis Garzoni, page 425.

95 *Cf.* Expert opinion of Doctor Luis Garzoni, page 425.

96 *Cf.* Expert opinion of Doctor Luis Garzoni, page 425.

97 *Cf.* Communication sent by Danilo Furlan to the Commission of July 28, 2004 (file of appendices al informe, volume IV, page 1726).

98 *Cf.* Brief issued by the Escuela de Educación Secundaria Técnica No. 4 on March 3, 1998 (file of appendices to the report, volume I, appendix 6, page 249).

the head despite her resistance," "tr[ying] to jump on top of a female student" or "pull[ing] down his pants and underwear in the classroom."

B) Civil suit for damages and collection of the compensation

78. On December 18, 1990 Mr. Danilo Furlan (hereinafter also "the petitioner" or the "plaintiff"), assisted by an attorney, filed suit in the civil courts – National Civil Court and the Federal Commercial Court No. 9- against the State of Argentina, to claim compensation for damages stemming from the disability of his son, Sebastián Furlan, due to the accident. The application stated that the suit was filed in order to interrupt the prescription of the action, with a provision to extend it later.[99]

79. On December 24, 1990 the judge ordered the case file to be forwarded to the Civil and Commercial Office of the Public Prosecutor to rule on its jurisdiction.[100] On February 11, 1991, the Public Prosecutor's Office ruled that the process initiated was subject to the provisions of Decrees 34/91 and 53/91,[101] relating to the temporary suspension, for a period of 120 days, of law suits and administrative claims against the National Government and Public Sector entities.[102]

B.1) Addendum to the complaint[103]

80. On April 16, 1991 the petitioner submitted an addendum to the complaint originally filed, seeking compensation for: i) "moral injury [due to] the physical and psychological suffering stemming from the accident"; ii) "the aftereffects from the brain injuries sustained, which will prevent him [Sebastián Furlan] in the future from undertaking college level studies or even from completing high school"; iii) "the aftereffects from the physical injuries sustained which prevent him and will prevent in the future from having a normal social life," and iv) "recurring brain and physical injuries, which manifest themselves as repeated headaches, memory loss and numbness in limbs." On that occasion, an official letter was sent to the Property Registry of the Province of Buenos Aires asking it to report on who held ownership of the property on the date when the accident occurred and the notice of the suit was requested.[104] Subsequently, the petitioner sought the benefit of

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[99] *Cf.* Lawsuit filed by Danilo Pedro Furlan of December 18, 1990 (file of appendices to the report, volume I, appendix 6, page 93 to 95).

[100] *Cf.* Brief of the Federal Judge addressed to the Public Prosecutor's Office of December 24, 1990 (file of appendices to the report, volume I, appendix 6, page 96).

[101] *Cf.* Brief of the Public Prosecutor's Office of February 12, 1990 (file of appendices to the report, volume I, appendix 6, page 97).

[102] *Cf.* Brief of February 11, 1991 of the Public Prosecutor's Office (file of appendices to the report, volume I, appendix 6, page 97) and Law 34/91 regarding the temporary suspension of administrative claims and lawsuits against the State and public sector institutions (file of appendices to the report, volume II, appendix 10.1, page 1004).

[103] Article 331 of the Code of Civil and Commercial Procedure of Argentina establishes that "The applicant may amend the lawsuit before it is served. Likewise, he may increase the amount claimed if new terms or installments of the same obligation expire prior to the ruling. Proceedings prior to the extension will be considered, and will be substantiated solely with a transfer to the other party. *Cf*. Law Decree 17454 of 1967 (file of appendices to the report, volume VII, page 3154).

[104] *Cf.* Addendum to the lawsuit filed on April 16, 1991 (file of appendices to the report, volume I, appendix 6, page 109 to 114).

waiver of court fees[105] and costs, which was granted by the court.[106] On April 19, 1991, the judge admitted the lawsuit.[107]

B.2) Determination of the defendant[108]

81. On May 24, 1991 the applicant requested that the case be ordered to proceed.[109] On May 29, 1991 the judge ordered an official letter to be issued to the General Staff of the Army so that it would report on whether any investigation had been opened with regard to the facts.[110]

82. On November 8, 1991 the petitioner requested the court to order that a copy of the complaint be served.[111] On November 14, 1991 the judge required the petitioner to state against whom the complaint was being brought.[112] On March 13, 1992 the applicant stated that he was "bring [ing the complaint] against the Ministry of National Defense [considering] that [it was] the institution responsible for the premises on which the accident occurred." He added that notwithstanding the foregoing, and as a preliminary measure, he was request[ing] that an official letter [be sent] to the Property Registry requesting information on the title of ownership of the premises where the accident occurred, as of the date of said accident."[113] On March 18, 1992 the judge ordered the communication[114]to be sent and on June 16, 1992 the petitioner's attorney prepared said communication.[115]

83. On July 24, 1992 the Property Registry informed the court that it was necessary to cite the street map where the property was located,[116] and therefore the petitioner

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105 *Cf.* Brief of Mr. Danilo Furlan of April 17, 1991 (file of appendices to the response, volume 10, page 4390).

106 *Cf.* Decision of the Federal Judge of First Instance of March 10, 1998 (file of appendices to the pleadings and motions brief, volume 5, page 2321). See also: brief of the Federal Judge of Second Instance of September 20, 2001 (file of appendices to the report, volume I, appendix 6, page 611) and brief of the Secretariat of September 21, 2001 (file of appendices to the report, volume I, appendix 6, page 612).

107 *Cf.* Brief of the Federal Judge of First Instance of April 19, 1991 (file of appendices to the report, volume I, appendix 6, page 116).

108 Article 330 of the Code of Civil and Commercial Procedure of Argentina regulates the "Format of the claim," and establishes that it "shall be presented in writing and contain: 1) [t]he name and address of the applicant." *Cf.* Law Decree 17454 of 1967 (file of appendices to the report, volume I, appendix 6, page 117)

109 *Cf.* Brief of Danilo Furlan of May 24, 1991 (file of appendices to the report, volume I, appendix 6, page 117).

110 *Cf.* Brief of the Federal Judge of First Instance of May 29, 1991 (file of appendices to the report, volume I, appendix 6, page 118).

111 *Cf.* Brief of Danilo Furlan of November 8, 1991 (file of appendices to the report, volume I, appendix 6, page 121).

112 *Cf.* Brief of the Federal Judge of First Instance of November 14, 1991 (file of appendices to the report, volume I, appendix 6, page 122).

113 *Cf.* Brief of Danilo Furlan of March 13, 1992 (file of appendices to the report, volume I, appendix 6, page 123).

114 *Cf.* Brief of the Federal Judge of First Instance of March 18, 1992 (file of appendices to the report, volume I, appendix 6, page 124).

115 *Cf.* Communication prepared by the attorney of Danilo Furlan of June 16, 1992 (file of appendices to the report, volume I, appendix 6, page 125).

116 *Cf.* Brief of the Registration and Publicity Department, Area 1, of July 24, 1992 (file of appendices to the report, volume I, appendix 6, page 126).

requested on September 4, 1992 that a letter be issued to the Office of Land Registry, so that a copy of said maps would be forwarded.[117] In February 1993, the petitioner's attorney prepared the official letter.[118] The relevant land register inquiries were made between March and May 1993. In an official letter dated May 6, 1993, the Office of Land Registry informed the court that it was unable to provide the information requested regarding plot 1,[119] and that with regard to plot 2, the property belongs to the "Supreme Government of the Nation."[120] On November 10, 1993 the petitioner asked the court to issue a letter to the Property Registry to in order provide information on the title of ownership of plot 1,[121] which was ordered by the judge on November 16, 1993.[122] Notification of the delivery of said letter was obtained on March 14, 1994.[123]

84. On February 22, 1996 the petitioner's attorney submitted a brief requesting that the court serve notice of the suit and indicated that "[i]n light of the negative outcome of the letters issued in these proceedings, and taking into account that the suit is being brought against the occupant of the property and owner of the elements that gave rise to the accident of the minor, I withdraw my request for the issuance thereof" and, consequently, "being that irrefutable evidence exists that said elements belonged to the Army, this action is being brought against the Ministry of Defense and/or whoever [was] determined to be liable."[124]

B.3. The process after notification of the suit to the General Staff of the Army

85. On February 27, 1996 the court ordered that the complaint be served to the "Ministry of Defense, General Staff of the Army" (hereinafter "EMGE", "the defendant" or "the respondent") which had a period of 60 days to respond to it.[125] On September 6, 1996 the defendant filed the answer to the complaint and a preliminary objection based on the statute of limitations.[126] On October 8, 1996 the court ordered said pleading to be served on

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[117] *Cf.* Brief of Danilo Furlan of September 4, 1992 (file of appendices to the report, volume I, appendix 6, page 127).

[118] *Cf.* Communication prepared by the attorney of Danilo Furlan in February 1993 (file of appendices to the report, volume I, appendix 6, page 131).

[119] *Cf.* Brief of the Registration and Publicity Department, Area 1, of May 6, 1993 (file of appendices to the report, volume I, appendix 6, page 139).

[120] *Cf.* Brief of the Registration and Publicity Department, Area 1, of April 22, 1993 (file of appendices to the report, volume I, appendix 6, page 137).

[121] *Cf.* Brief of Danilo Furlan of November 10, 1993 (file of appendices to the report, volume I, appendix 6, page 141).

[122] *Cf.* Brief of the Federal Judge of First Instance of November 16, 1993 (file of appendices to the report, volume I, appendix 6, page 142).

[123] *Cf.* Certificate of the administrative secretariat of March 14, 1994 (file of appendices to the report, volume I, appendix 6, page 144).

[124] *Cf.* Brief of Danilo Furlan of February 22, 1996 (file of appendices to the report, volume I, appendix 6, page 145).

[125] *Cf.* Brief of the Federal Judge of First Instance of February 27, 1996 (file of appendices to the report, volume I, appendix 6, page 146).

[126] *Cf.* Response to petition from the State-General Staff of the Army of September 3, 1996 (file of appendices to the report, volume I, appendix 6, page 153).

the petitioner, [127] who in response requested that the objection be dismissed on October 16, 1996.[128]

86. On October 24, 1996, the Juvenile Defender's Office (Asesoría de Menores) submitted a brief stating that because Sebastián Furlan had reached adult age at that time, that institution could not represent him. However, it took on the representation of his brothers, namely, Sabina Eva and Claudio Edwin Furlan.[129] In this regard, on October 28, 1996 Sebastián Furlan endorsed all actions taken to date by this father on his behalf.[130]

87. On November 1, 1996 the court ruled that the action had not lapsed under the statute of limitations and rejected the preliminary objection filed by EMGE and set the fees of the petitioner's attorney.[131] This decision was appealed by EMGE's representative on November 18, 1996.[132] On November 26, 1996 the judge asked the State to provide a legal basis for its appeal.[133] On December 9, 1996 the EMGE asserted that it was appealing the decision based on the regulation of the opposing party's attorney fees.[134] On December 12, 1996 the judge asked the EMGE to indicate whether it was appealing the fees because they were too high or too low.[135] On March 17, 1997 the court ordered the EMGE to respond within two days;[136] also, the petitioner's attorney submitted a letter: i) requesting that the court order EMGE to respond to the judge's request of December 12, 1996 on the appeal of attorney's fees; ii) stating that the failure to respond was prejudicial to the plaintiff, and iii) calling for a settlement hearing to be arranged.[137] On March 24, 1997 the defendant indicated that it was appealing the judgment of regulation of the attorney fees because they were too high.[138] Finally, on March 26, 1997 the appeal was granted, and the court ordered

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127 *Cf.* Brief of the Federal Judge of First Instance of October 8, 1996 (file of appendices to the report, volume I, appendix 6, page 164).

128 *Cf.* Brief of Danilo Furlan of October 16, 1996 (file of appendices to the report, volume I, appendix 6, page 167).

129 *Cf.* Brief of the Ombudsman of October 24, 1996 (file of appendices to the report, volume I, appendix 6, page 169).

130 *Cf.* Brief of Sebastián Furlan of October 28, 1996 (file of appendices to the report, volume I, appendix 6, page 171).

131 *Cf.* Ruling of November 1, 1996 (file of appendices to the report, volume I, appendix 6, page 175).

132 *Cf.* Appeal filed by the attorney of the defendant of November 18, 1996 (file of appendices to the report, volume I, appendix 6, page 182).

133 *Cf.* Brief of the Federal Judge of First Instance of November 26, 1996 (file of appendices to the report, volume I, appendix 6, page 183).

134 *Cf.* Brief submitted by the attorney of the defendant of December 9, 1996 (file of appendices to the report, volume I, appendix 6, page 184)
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135 *Cf.* Brief of the Federal Judge of First Instance of December 12, 1996 (file of appendices to the report, volume I, appendix 6, page 185).

136 *Cf.* Brief of the Federal Judge of First Instance of March 17, 1997 (file of appendices to the report, volume I, appendix 6, page 186).

137 *Cf.* Brief of Sebastián Claus Furlan of March 17, 1997 (file of appendices to the report, volume I, appendix 6, page 187).

138 *Cf.* Brief submitted by the attorney of the defendant of March 24, 1997 (file of appendices to the report, volume I, appendix 6, page 190).

"the matter to be [forwarded] to the [...] National Court of Appeals."[139]

88. As mentioned previously, on March 17, 1997 the petitioner's attorney asked the court to summon a settlement hearing in order to reach an agreement with the EMGE,[140] which was set for April 10, 1997.[141] However, the petitioner requested a new date to be set due to the fact that it was impossible to serve him notice on time.[142] The new settlement hearing was set for May 8, 1997.[143] The EMGE submitted a brief claiming that neither the attorney representing the EMGE in the proceedings, nor any other attorney from said institution could attend the hearing with the authority to enter into a settlement, because under domestic law the Ministry of Defense was the only entity authorized to do so. On that occasion, the EMGE's attorney clarified that in any case the State or EMGE "was open to considering any type of proposal."[144] The court put on the record that on May 8, 1997 Sebastián Furlan and his attorney appeared at the settlement hearing, but that there was no representative of the EMGE.[145]

89. On July 14, 1997 the plaintiff introduced new facts in the record of the proceedings, reporting the assault committed by Sebastián Furlan on his grandmother, as well as other acts of aggression which had prompted the intervention of the police on several occasions (*infra* paras. 106 to 110). Specifically, he stated that "[o]n many occasions [Sebastián Furlan] los[t] control of himself and perform[ed] actions contrary to all logic and morals, which led to the intervention of the police."[146] Although the attorney of the defendant objected to their admission,[147] the Court decided to admit the new facts[148] in an order of September 26, 1997.

90. On August 21, 1997 a new attorney took on the legal representation of Sebastián Furlan in these judicial proceedings.[149] On October 21, 1997 this attorney asked the court to

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139 *Cf.* Brief of the Federal Judge of First Instance of March 26, 1997 (file of appendices to the report, volume I, appendix 6, page 191).

140 *Cf.* Brief of Sebastián Claus Furlan of March 17, 1997, page 188.

141 *Cf.* Brief of the Federal Judge of First Instance of March 21, 1997 (file of appendices to the report, volume I, appendix 6, page 189).

142 *Cf.* Brief of Sebastián Claus Furlan of April 7, 1997 (file of appendices to the report, volume I, appendix 6, page 193).

143 *Cf.* Brief of the Federal Judge of First Instance of April 8, 1997 (file of appendices to the report, volume I, appendix 6, page 194).

144 *Cf.* Brief of the Federal Judge of First Instance of May 6, 1997 (file of appendices to the report, volume I, appendix 6, page 196).

145 *Cf.* Certificate of May 8, 1997 (file of appendices to the report, volume I, appendix 6, page 198).

146 *Cf.* Brief of Sebastián Claus Furlan of July 14, 1997 (file of appendices to the report, volume I, appendix 6, page 203).

147 *Cf.* Brief submitted by the attorney of the defendant (file of appendices to the report, volume I, appendix 6, page 215).

148 *Cf.* Ruling issued by the Federal Judge of First Instance on September 26, 1997 (file of appendices to the report, volume I, appendix 6, page 216).

149 *Cf.* Brief of the attorney of Sebastián Furlan of August 21, 1997 (file of appendices to the report, volume I, appendix 6, page 211). In this regard, on July 14, 1997 the representative of Sebastián Furlan "abdicated responsibility for legal representation in the instant case" which was accepted by the Court on July 17, 1997 (file of appendices to the report, volume I, appendix 6, page 201).

authorize the introduction of the evidence.[150] On October 24, 1997 the judge announced the taking of evidence in the proceedings for a period of 40 days, and the parties were given 10 days to produce evidence.[151] On November 14, 1997 Sebastián Furlan's attorney introduced the documentary evidence, evidence related to requests for information, statements and expert witness's statement, and also requested the appointment of a doctor and a psychiatrist as expert witnesses.[152] On December 16, 1997 the attorney requested that the court rule on the admissibility of such requested evidence. On December 18, 1997 the court provided the evidence introduced by the plaintiff, setting August 19, 20 and 21, 1998 to hear the testimony of the witnesses called.[153] On that same day the court set a hearing for February 12, 1998 to receive the testimony of Sebastián Furlan, by means of a procedural act called "cross examination."[154] However, the defendant did not attend said proceeding;[155] therefore, on December 23, 1999 Sebastián Furlan's attorney asked the court to declare the defendant's right to cross-examine to be forfeited.[156]

91. On February 12, 1998 the attorney requested the appointment of experts, who were appointed on February 17, 1998;[157] they appeared on March 2, 1998, accepted the position

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150 *Cf.* Brief of the attorney of Sebastián Furlan of October 21, 1997 (file of appendices to the report, volume I, appendix 6, page 219).

151 *Cf.* Brief of the Federal Judge of First Instance of October 24, 1997 (file of appendices to the report, volume I, appendix 6, page 220).

152 Cf. Brief of the attorney of Sebastián Furlan of November 14, 1997 (file of appendices to the report, volume I, appendix 6, page 230 to 233). In this brief several items of evidence were requested, including, collecting ex officio: i) A copy of the case file of the proceedings before the "Court of Minors No. 1, sec. 1 of the judicial [department] of San Martín […] in case No. 18903," and ii) Copy of the case file of the criminal action against Sebastián Furlan for severe injuries to his grandmother ("Case No. 27.438/3861 regarding severe injuries caused by Sebastián Furlan, Criminal and Correctional Court No. 5 (1994))." With regard to the informative evidence, the judge was asked to issue notifications addressed to the following institutions: i) "Escuela de Education Técnica de Ciudadela," for the purpose of submitting an "opinion on Sebastián as a regular student [and] his grades." In this report the school was also required to describe his "level of integration" and "intellectual performance," "before and after December 1988 and during each school year"; ii) "Instituto Privado Oriental," to report the level in Karate that Sebastián had attained; iii) "Hospital Posadas, to submit the medical records" of Sebastián Furlan "related to the accident he suffered on December 21, 1988"; iv) "Police Station (Comisaría[s]) 35 of the Federal Capital" and "45 of the Federal Capital to report "on whether Sebastián Claus Furlan was held or detained at those offices" in 1993 and the reasons for such detentions. Regarding the expert evidence, the judge requested the appointment of the following professionals to submit their expert opinions on the physical and mental condition of Sebastián Claus Furlan: i) a physician to report on the "injuries suffered," "treatments, healing and surgeries," "current status," "degree of disability" and "necessary treatments" for Sebastian, and ii) psychiatrist's formal assessment of Sebastián in relation to the accident that occurred in 1998, his "level of disability," "necessary treatment, duration and cost thereof and any other information." Finally, the testimonial evidence of eight witnesses was requested.

153 *Cf.* Brief of the Federal Judge of First Instance of December 18, 1997 (file of appendices to the report, volume I, appendix 6, page 235).

154 *Cf.* Brief of the Federal Judge of First Instance of December 18, 1997 (file of appendices to the report, volume I, appendix 6, page 468).

155 *Cf.* Record of appearance at the cross-examination hearing issued by Secretariat 18 of the National Civil and Federal Commercial Court No.9 of February 12, 1998 (file of appendices to the report, volume I, appendix 6, page 469).

156 *Cf.* Brief of the attorney of Sebastián Furlan of December 23, 1999 (file of appendices to the report, volume I, appendix 6, page 480).

157 *Cf.* Brief of the Federal Judge of First Instance of February 17, 1998 (file of appendices to the report, volume I, appendix 6, page 237).

and took their oath.[158] That same day the first documentary evidence was received, consisting of the report submitted by Club Ciudadela Norte.[159] Also, on March 6, 1998 the Escuela Técnica No. 4 reported on Sebastián Furlan's performance at school during the academic years before and after his accident.[160] On April 6, 1998 the Chief of Police Station 45 of the Argentinean Federal Police, forwarded a record referring to one of Sebastián Furlan's detentions after the accident.[161]

92. Between August 19 and 20, 1998 the court received the testimony of five of the eight witnesses called by the petitioner's attorney.[162] On August 20, 1998 the attorney waived the testimony the other three witnesses.[163]

93. On August 14, 1998 the attorney issued a communication to EMGE asking it to submit all administrative records related to Sebastián Furlan's proceedings.[164] On November 12, 1998 the Chief of the General Archives of the Army informed the court that no record relating to Sebastián Furlan appeared in the records of any of the different offices of the Army.[165]

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158 *Cf.* Certificates issued by the Federal Judge of First Instance on March 2, 1998 (file of appendices to the report, volume I, appendix 6, page 243).

159 *Cf.* Brief issued by Club Ciudadela Norte, page 244.

160 *Cf.* Brief issued by Escuela de Education Técnica No. 4, *supra* note 96, page 249.

161 *Cf.* Brief issued by Police Station No. 15 Federal Police of Argentina of April 6, 1998 (file of appendices to the report, volume I, appendix 6, page 346).

162 *Cf.* Transcript of the statement by Leonardo Javier Occhiuzzi of August 19, 1998; transcript of the statement by Rubén Guerrero of August 19, 1998; transcript of the statement by Jorge Omar Praderio of August 20, 1998; transcript of the statement by Osvaldo Roberto Sotomayor of August 20, 1998, and transcript of the statement by Gabriel Osvaldo Lacasa of August 20, 1998 (file of appendices to the report, volume I appendix 6, pages 371 to 380). Regarding Sebastián Furlan's general situation prior to the accident, his neighbors and friends were consistent in indicating that he was a normal kid, keen on sports and he attended school. The statement of August 19, 1998 by Leonardo Javier Occhiuzzi, "neighbor and friend," indicates "that [at the time of the accident Sebastián] was a student and practiced sports […] he played basketball. Nevertheless he pointed out that Sebastián "was in a bad state of mind at the time of accident as well as immediately afterwards." Jorge Omar Praderio emphasized that "before [the accident Sebastián] was a normal kid." Similarly, Gabriel Osvaldo Lacasa stated in his testimony that "before the accident [Sebastián] played soccer, volleyball, went swimming, and did as many sports as he could [and] also studied." Regarding the consequences of the accident, the witnesses described a general deterioration of Sebastián's functions. Leonardo Javier Occhiuzzi stated that at the time of the statement Sebastián "[had] motor, coordination and speech problems […] he kn[ew]this because [he was] his neighbor" and "liv[ed] opposite [his] house." Moreover, in his statement of August 19, 1998 Rubén Guerrero explained that "when he spok[e] and walk[ed] it was noticeable that he was not normal" and that right after the accident "the father helped him along because he could not walk." Similarly, Jorge Omar Praderio gave testimony August 20, 1998, pointing out that Sebastián "[had] difficulties of speech, sometimes lost his memory, he got [lost] and the father [had] to go look for him." He said that at the time of the statement Sebastián [was] in very bad state, he realiz[ed] that he could not get a good job[and that] he [was] not normal." Osvaldo Roberto Sotomayor stated that after the accident Sebastián was "always in a bad state, even now […] he cannot find a job [and] cannot finish studying." Likewise, Gabriel Osvaldo pointed out that "after the accident he would leave, disappear, and the father had to go look for him around the neighborhood […] if he saw someone it [was] like if he didn't recognize them." He added that, as of the time of this statement, "he does not seem to be well, he c[ould] not hold a conversation, [and] that he was like a four or five year old kid."

163 *Cf.* Brief of the attorney of Sebastián Furlan of August 20, 1998 (file of appendices to the report, volume I, appendix 6, page 381).

164 *Cf.* Communication issued by secretary 18 of the National Civil and Federal Commercial Court No.9 of August 14, 1998 (file of appendices to the report, volume I, appendix 6, page 470).

165 *Cf.* Communication of the Argentine Army of November 12, 1998 (file of appendices to the report, volume I, appendix 6, page 479).

B.4) Official medical expert witness' reports on Sebastián Furlan

94. On May 18, 1998 the official medical expert witness specializing in neurology, Dr. Juan Carlos Brodsky, requested that Sebastián Furlan undergo a series of medical tests, including an MRI.[166] On October 6, 1998 the requested medical tests were performed;[167] however, regarding the MRI, after several efforts to obtain an appointment for this test,[168] it was finally programmed for January 11, 2000.[169]

95. On December 10, 1998 Sebastián Furlan's attorney requested that the psychiatric expert be notified, with a warning of removal.[170] On December 11, 1998 the court ordered this expert witness to report within three days on the status of his assessment.[171] The medical psychologist expert witness presented his report,[172] which was forwarded to the parties by order of the judge on March 5, 1999.[173] The expert report concluded that Sebastián Furlan had a "grade II organic post-traumatic mental disorder, with a 20% disability and an abnormal neurosis with grade IV obsessive compulsive manifestation [...] [and] a 40% disability." He recommended psychotherapeutic treatment, including three weekly individual and group sessions at an estimated cost of thirty pesos per session "for the time necessary to obtain an improvement, estimated at no less [than] two years."[174] Subsequently, the applicant's attorney requested two clarifications regarding the expert report by medical psychologist Luis Garzoni,[175] which was forwarded to the parties by a

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166 *Cf.* Brief of medical expert witness Juan Carlos Brodsky, pages 360 and 366).

167 *Cf.* Brief issued by the deputy medical director of the Hospital General de Agudos Donación Santojanni August 20, 1998 (file of appendices to the report, volume I, appendix 6, page 369).

168 *Cf. inter alia* brief of Sebastián Furlan's attorney of December 4, 1998, stating that "the nuclear MRI can not be performed as [the hospital Santojanni] does not have this equipment" (file of appendices to the report, volume I, appendix 6, page 403); order to issue a communication to the Hospital Argerich submitted by the Federal Judge of First Instance on December 4, 1998 (file of appendices to the report, volume I, appendix 6, page 405); communication of February 5, 1999 (file of appendices to the report, volume I, appendix 6, page 410); communication of the head of the Legal Administrative Department of the Health Secretariat of March 2, 1999 (file of appendices to the report, volume I, appendix 6, page 438); communication of the General Health Care Directorate of the Government of the City of Buenos Aires of March 19, 1999 (file of appendices to the report, volume I, appendix 6, page 441), communication of the General Health Care Directorate of the Government of the City of Buenos Aires of May 19, 1999 (file of appendices to the report, volume I, appendix 6, page 445) and communication of the head of the Legal Administrative Department of the Health Ministry of February 8, 2000 (file of appendices to the report, volume I, appendix 6, page 466).

169 *Cf.* Communication of the Hospital General de Agudos Cosme Argerich of September 25, 1999 (file of appendices to the report, volume I, appendix 6, page 448).

170 *Cf.* Brief of Sebastián Furlan's attorney of December 10, 1998 (file of appendices to the report, volume I, appendix 6, page 406).

171 *Cf.* Brief of secretary 18 of the National Civil and Federal Commercial Court No.9 of December 11, 1998 (file of appendices to the report, volume I, appendix 6, page 407).

172 *Cf.* Expert opinion of Doctor Luis Garzoni (file of appendices to the report, volume I, appendix 6, page 424 to 431).

173 *Cf.* Brief of the Federal Judge of First Instance of March 5, 1999 (file of appendices to the report, volume I, appendix 6, page 432).

174 *Cf.* Expert opinion of Doctor Luis Garzoni, page 431.

175 *Cf.* Brief of Sebastián Furlan's attorney (file of appendices to the report, volume I, appendix 6, page 435).

court order on March 5, 1999.[176] The clarifications requested consisted of indicating "the date of the accident in the opening paragraph" [of the expert report] and "clarif[ying] to what extent the mental disorder aggravated the abnormal experiential neurotic reaction." The clarifications were answered in a brief filed on May 11, 1999.[177] At that time, the expert confirmed that "the correct date on which accident occurred [was] 1988." On the other point, he explained that "in specifying that the organic post-traumatic mental disorder aggravate[d] the abnormal neurotic reaction" he meant that "if the accident had not occurred […] the abnormal experiential neurotic reaction may not have appeared, [and] if it had appeared, it may have been minor or could have been addressed with or without psychotherapy."

96. With regards to the medical report by the expert in neurology, on November 15, 1999, after requesting an extension of 20 days,[178] the expert neurologist submitted his written expert opinion. At that time the expert witness also submitted an encephalic MRI with gadolinium.[179] According to his report, Sebastián Furlan suffered from "a Grade IV organic post-traumatic mental disorder, with a partial and permanent disability of 70% according to the evaluation table of workplace disability" established in Argentinean Law.[180] This report concluded that: i) "the aftereffects that the plaintiff presents were caused by cranial encephalic trauma" and "are irreversible, particularly the cognitive disorders." Regarding the "motor disorders" he indicated that "these can be reduced through appropriate physio-kinesiologic therapy"; ii) "the medical treatment, the surgical treatment the pre and post operative therapeutic measures were appropriate for [the] plaintiff's clinical condition"; iii) "the treatment should be predominantly psychiatric, in order to medicate [the patient] with the necessary drugs to reduce anxiety and aggressiveness," and iv) "physio-kinesiologic therapy treatment should be given in order to re-teach [him his] motor skills," for a period of at least. Two weekly sessions were requested "at a cost of 40 pesos per session."[181] On November 29, 1999 the applicant's attorney requested clarification of the expert report presented by Dr. Juan Carlos Brodsky[182] regarding the physical therapy and kinesiotherapy ordered in his report. On that occasion the attorney asked for information "as to how long Sebastián Furlan [should] undergo this treatment." The expert witness answered this point in December 1999, indicating that "the physical-kinesiotherapy [should] be carried out for a period of no less than two years."[183]

97. On February 25, 2000, the petitioner's attorney requested that the evidence be certified and that the evidentiary period be closed[184]. On March 2, 2000 the court certified

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[176] *Cf.* Brief of the Federal Judge of First Instance of March 5, 1999 (file of appendices to the report, volume I, appendix 6, page 432).

[177] *Cf.* Brief of Doctor Luis Garzoni of May 11, 1999 (file of appendices to the report, volume I, appendix 6, page 443).

[178] *Cf.* Brief of Doctor Juan Carlos Brodsky of October 26, 1999 (file of appendices to the report, volume I, appendix 6, page 450).

[179] *Cf.* Expert Report of Doctor Juan Carlos Brodsky, pages 451 to 459.

[180] *Cf.* Expert Report of Doctor Juan Carlos Brodsky, page 456.

[181] *Cf.* Expert Report of Doctor Juan Carlos Brodsky, page 458.

[182] *Cf.* Brief of Sebastián Furlan's attorney of November 29, 1999 (file of appendices to the report, volume I, appendix 6, page 460).

[183] *Cf.* Brief of Doctor Juan Carlos Brodsky (file of appendices to the report, volume I, appendix 6, page 463).

[184] *Cf.* Brief of Sebastián Furlan's attorney of February 25, 2000 (file of appendices to the brief of pleadings and evidence, volume VII, pages 3584 to 3586).

that no further evidence was pending production[185] and, on March 6, ordered the parties to be served notice to submit their arguments on the evidence that had been produced within a period of six days, counted as of the fifth day after notice was served of said decision.[186]

98. On April 6, 2000 the petitioner's attorney submitted his arguments on the merits of the evidence introduced in the proceedings and asked for compensation that would take into account his client's physical and mental disability and include the treatments recommended by the professionals who intervened as expert witnesses.[187] He also argued that "proof has been given of the plaintiff's significant and irreversible injuries and disability, as well as the fact that prior to the accident he was a boy who took part (like any other child) in all school and activities and sports, and that after the accident he could not take part in them as he did before." On April 11, 2000 the EMGE's attorney submitted her arguments on the merits of the evidence presented, and requested that the case be dismissed.[188] On April 18, 2000,[189] May 23, 2000[190] and August 22, 2000[191] the petitioner's attorney submitted motions requesting the judge to issue a ruling.

B.5. Judgments of first and second instance

99. In the trial court judgment, rendered on September 7, 2000, the court ruled that the complaint was admissible, establishing that the injury inflicted upon Sebastián Furlan was the consequence of negligence on the part of the State, as the owner and the party responsible for the property. This, given that the property was in a state of abandonment and disrepair, lacked any type of perimeter fence to prevent people entering and had hazardous elements. In addition, the judgment established that local residents regarded this property as a public square or a site of public use, where children went to play on a regular basis.[192]

100. In its judgment the court deemed proven that Sebastián Furlan "suffers from a post-traumatic organic disorder and an abnormal neurosis with an obsessive compulsive manifestation (with deterioration of his personality), which has determined a significant degree of mental disability […] and irreversible disorders in the cognitive and motor areas." However, the court considered that in this case Sebastián Furlan also bore some responsibility, given that he "willingly and aware of the risks that could ensue from playing in unsuitable areas, with unfamiliar and abandoned elements," had behaved in a manner

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185 *Cf.* Certification of March 2, 2000 (file of appendices to the report, volume I, appendix 6, page 481).

186 *Cf.* Certification submitted by the Federal Judge of First Instance of March 2, 2000 (file of appendices to the report, volume I, appendix 6, page 481).

187 *Cf.* Closing arguments submitted by Sebastián Furlan's attorney on April 6, 2000 (file of appendices to the report, volume I, appendix 6, page 501 to 508).

188 *Cf.* Closing arguments of April 11, 2000 (file of appendices to the report, volume I, appendix 6, page 509 to 514).

189 *Cf.* Brief of Sebastián Furlan's attorney of April 18, 2000 (file of appendices to the report, volume I, appendix 6, page 483).

190 *Cf.* Brief of Sebastián Furlan's attorney of May 23, 2000 (file of appendices to the report, volume I, appendix 6, page 494).

191 *Cf.* Brief of Sebastián Furlan's attorney of August 22, 2000 (file of appendices to the report, volume I, appendix 6, page 515).

192 *Cf.* Judgment issued by National Court No. 9 of Civil and Commercial Matters, pages 518 and 519.

that led to the accident that resulted in the injuries. Based on this, the court ascribed 30% of the responsibility to Sebastián Furlan and 70% of the responsibility to the State. Consequently, it ordered the National General Staff of the Army to pay Sebastián Furlan the sum of 130,000 pesos plus interest, in proportion to and in keeping with the guidelines established in the judgment. The court also ordered the State to pay the legal costs inasmuch as it was found to be substantially at fault, and taking into account the nature of the claim.[193]

101. On September 15 and 18, 2000 both the defendant[194] and the petitioner[195] filed, respectively, a motion of appeal.[196] The appeals court judgment, issued on November 23, 2000 by the First Chamber of the National Court for Federal Civil and Commercial Matters, upheld the judgment. This Chamber endorsed the view that there was "a combination of presumed responsibility (due to the risk situation) and of proven responsibility (due to the actions of [Sebastián Furlan])." It concluded that the lower court "correctly apportioned the impact of both responsibilities" and that "the compensation awarded" was adequate, taking into account the disability suffered by Sebastián, the "irreversible consequences of the comatose state" and the treatments required. Regarding the payment of legal costs the Chamber indicated that "it agree[d]" with the defendant that "the distribution of responsibility […] should be reflected in the assignment of the legal costs," therefore it established that Sebastián Furlan should assume 30% of the corresponding payment.[197]

B.6. Collection of the compensation

102. In an order issued on November 30, 2000 the judge ruled that, in accordance with Article 6 of Law 25.344 on Financial-Economic Emergency, time periods governed by procedural terms were suspended.[198] On March 22, 2001 the petitioner, through his attorney, paid the amounts owed[199] and requested the judge to decree the lifting of the procedural terms and to transfer the settlement.[200] On May 15, 2001 the judge approved the sum of 103.412,40 pesos in settlement of the principal plus interest in favor of Sebastián Furlan,[201] and on May 30, 2001 a record was entered in the case file stating that

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193 *Cf.* Judgment issued by National Court No. 9 of Civil and Commercial Matters, pages 518 to 529.

194 *Cf.* Motion of appeal of September 15, 2000 (file of appendices to the report, volume I, appendix 6, page 532).

195 *Cf.* Motion of appeal by Sebastián Furlan's attorney of September 18, 2000 (file of appendices to the report, volume I, appendix 6, page 533).

196 The State's motion of appeal was filed on the grounds that the judicial decision causes "an irreparable burden" to the State. Similarly, the applicant indicated that the judgment caused him an "irreparable burden," therefore he filed the motion of appeal. *Cf.* Motion of appeal of September 15, 2000, page 532 and Motion of Appeal filed by Sebastián Furlan's attorney on September 18, 2000, page 533.

197 *Cf.* Judgment issued by the Civil and Commercial Chamber No.1 of November 23, 2000 (file of appendices to the report, volume I, appendix 6, page 567).

198 *Cf.* Order issued by the Civil and Commercial Chamber No.1 of November 30, 2000 (file of appendices to the report, volume I, appendix 6, page 571). The Chamber issued a communication to the Office of the Attorney of the National Treasury, which would be calculated 20 days after its receipt, after which the procedural terms would be renewed with no further proceedings.

199 *Cf.* Brief of Sebastián Furlan's attorney of March 22, 2001 (file of appendices to the report, volume I, appendix 6, page 576).

200 *Cf.* Brief of Sebastián Furlan's attorney of March 22, 2001 (file of appendices to the report, volume I, appendix 6, page 577).

201 *Cf.* Communication issued by the Federal Judge of First Instance on May 15, 2001 (file of appendices to the report, volume I, appendix 6, page 582).

this settlement was firm, agreed to and unpaid.[202]

103. The compensation awarded to Sebastián Furlan was subject to Law 23.982 of 1991, which structured the consolidation of past obligations from cases or title prior to April 1, 1991 that consisted in the payment of sums of money.[203] This law provided two ways to collect compensation: i) deferred payment in cash or, ii) cashing in of consolidated bonds issued for sixteen-year terms.[204]

104. Bearing in mind his precarious circumstances and the need to obtain money quickly,[205] Sebastián Furlan chose to acquire consolidated bonds in local currency.[206] Finally, after a number of procedures carried out for this purpose, on February 6, 2003 the State informed the interested party of the availability of Consolidated Bonds maturing in 2016.[207]

105. On March 12, 2003 the State paid 165.803 bonds to the beneficiary. That same day Danilo Furlan sold those bonds. Bearing in mind that Sebastián Furlan had to pay his attorney's fees for a value of 49,740 bonds (30% of the fees)[208] and that, under the terms of the judgment of second instance, he had to pay part of the legal costs,[209] Sebastián Furlan ultimately received 116,063 bonds, equivalent to approximately 38,300 pesos, of the 130,000 pesos ordered in the judgment.

C) Criminal proceedings against Sebastián Furlan

106. On February 3, 1994, at which time Sebastián Furlan was 19 years old, his uncle "reported him to the police station for hitting his grandmother, who was 84 years old." According to the complaint, on December 18, 1993, Sebastián Furlan came home and, without saying a word, "hit [his grandmother] with his fist[210] causing her facial injuries and a broken right arm."[211] As a result of this incident on February 21, 1994 the Judge of the

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202 *Cf.* Certificate of May 30, 2001 (file of appendices to the report, volume I, appendix 6, page 583).

203 *Cf.* Article No. 1 of Law 23.982 of 1991 (file of appendices to the report, volume I, appendix 6, page 3184)

204 *Cf.* Article No. 10 and 12 of Law 23.982 of 1991 (file of appendices to the report, volume I, appendix 6, page 3184).

205 *Cf.* Statement by Claudio Furlan rendered at the public hearing in this case, and briefs of Danilo Furlan to the Inter-American Commission dated March 26, 2003, July 29, 2008 and May 11, 2010 (file of appendices to the report, volume IV, page 1776 and volume III, pages 1372 and 1226).

206 *Cf.* Brief of Sebastián Furlan's attorney of June 7, 2001 (file of appendices to the report, volume I, appendix 6, page 2335) and request for payment of consolidated debt signed by Sebastián Furlan's attorney on June 7, 2001 (file of appendices to the report, volume I, appendix 6, page 2390). On that date the attorney initiated a procedure before the General Accounting Department of the Argentinean Army to obtain compensation.

207 *Cf.* Communication issued by the Caja de Valores S.A. (Central Securities Depositary) on February 6, 2003 (file of appendices to the report, volume I, appendix 6, page 2401). This communication indicated the availability of 165.803 consolidation bonds in local currency, of the fourth series 2%.

208 *Cf.* Receipt issued by Sebastián Furlan's attorney on March 17, 2003 (file of appendices to the report, volume III, appendix 6, page 1218) and Agreement on Fees issued by Sebastián Furlan's attorney on August 13, 1997 (file of appendices to the written brief containing pleadings and evidence, volume V, page 2402).

209 *Cf.* Judgment issued by the Civil and Commercial Chamber No.1, page 570.

210 *Cf.* Statement before the Comisaría de Tres de Febrero Sexta (Police Station 6 of Tres de Febrero) of January 9, 1994 (file of appendices to the report, volume II, page 721).

211 *Cf.* Medical Records of Mrs. Virginia Minetti issued by Hospital Nuestra Señora de la Merced on December

Court No. 5 for Criminal and Correctional Matters of San Martin, Buenos Aires Province, issued a preventive detention warrant against Sebastián Furlan.[212]

107. On February 28, 1994 Sebastián Furlan went to the Police Station of Ciudadela Norte, which executed the warrant.[213] That same day, the aforesaid Court No. 5 for Criminal and Correctional Matters ordered the Forensic Service Department to perform "a psychiatric evaluation [...], aimed at determining whether [Sebastián Furlan] is capable of providing a preliminary examination statement and whether he is dangerous to himself and/or to others." The psychiatric assessment performed on Sebastián that same day indicated that he suffered from a "mixed psychiatric syndrome, post-traumatic organic mental dissociative disorder" which made him unable to "intellectually grasp the potential illegality of his conduct and to autonomously control his will" and that he "pose[d] a potential danger to himself and to others," hand should therefore be admitted to a specialized facility for his protection and treatment."[214]

108. Based on this medical opinion, on March 1, 1994 the Judge of Court No. 5 for Criminal and Correctional Matters ordered the case against Sebastián Furlan to be finally dismissed. She also took into account that the forensic examiners of the Forensic Service Department considered it "necessary for [... Sebastián] to be admitted to a specialized center for his safety and treatment, and ordered, in accordance with Article 34.1 of the Argentinean Criminal Code, due to the "danger that Sebastián [...] represents to himself and others, his internment under police custody at Hospital Evita (formely Araoz Alfaro)" (hereinafter "Hospital Evita"), "for his safety and treatment, until the conditions that make him dangerous disappear." [215] In addition, she ordered a new assessment to be performed on Sebastián Furlan on March 21, 1994 by forensic doctors of the Forensic Service Department. The communication of April 7, 1994 issued by the Director of Hospital Evita indicated that Sebastián was "admitted on March 2, 1994; he was brought in handcuffs, on remand, and accused of serious injuries [...] he was left as an accused when in fact he [was] sick and injured." [216]

109. In the report of March 15, 1994 Hospital Evita notified Court No. 5 for Criminal and Correctional Matters of Sebastián Furlan's "serious and dangerous family situation" due to the alleged aggressions by his father against him, and recommended that "Sebastián remain in hospital." [217] On March 16, 1994 the Court of San Martin summoned a doctor to provide a medical statement regarding the condition of Sebastián Furlan and his father, "to

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23, 1993 (file of appendices to the report, volume II, page 717).

212 *Cf.* Preventive detention warrant issued by the judge in the Criminal and Correctional Court on February 21, 1994 (file of appendices to the report, volume II, page 728).

213 *Cf.* Notification of detention (file of appendices to the report, volume II, pages 733 and 741)

214 *Cf.* Report submitted by two forensic examiners to the Criminal and Correctional Court No. 5 of February 28, 1994 (file of appendices to the report, volume II, pages 756 to 757).

215 *Cf.* Brief issued by Criminal Court No. 5 of San Martín on March 1, 1994 (file of appendices to the report, volume II, pages 760 to 761).

216 *Cf.* Letter from the Hospital Evita addressed to Criminal Court No. 5 of San Martín, on April 7, 1994 (file of appendices to the report, volume II, page 821).

217 *Cf.* Report of Hospital Evita before the Criminal Court No. 5 of San Martin of March 15, 1994 (file of appendices to the report, volume II, page 774).

be psychiatrically examined by forensic experts from the Forensic Service Department." [218] On March 21, 1994 the court received the report of the doctors of the forensic department, which recommended "continuing [the] inpatient care [of Sebastián ...] for his protection and therapy, given that he still remained a potential danger to himself and to others." On March 23, 1994 the forensic doctor informed the court that considering Sebastián Furlan's clinical condition, "once he is psychiatrically balanced and properly medicated," police custody was no longer necessary.[219] Consequently, on March 25, 1994 this measure was lifted.[220] On April 7, 1994 Sebastián Furlan's medical records were submitted, which indicated his need for "psychological treatment, neurological control and a family system to contain and support him in his development."[221]

110. On April 11, 1994 the Forensic Service Department informed the court that Sebastián Furlan " could follow the psychological treatment and neurological control prescribed by the professionals from Hospital Evita […] on an outpatient basis with adequate support from his parents, suggesting [... his] temporary discharge [...] and the monitoring of his clinical-psychiatric progress by the Forensic Service within 30 days." [222] On April 21, the District Mental Health Supervisor requested, prior to the discharge of Sebastián Furlan, for family treatment sessions to be performed at the Centro de Integracion Familiar (Family Integration Center). The sessions were held on April 28, 1994, May 4, 1994 and May 5, 1994 with members of the Furlan family.[223] On May 18, 1994 the District Mental Health Supervisor and the main Prosecutor of the Public Prosecutor's Office approved the discharge of Sebastián Furlan on condition that he continue with the psychiatric treatment at the Family Integration Center.[224] On May 19, 1994 the judge in the case ordered the immediate discharge of Sebastián[225] under the condition that he must continue the psychiatric treatment at the Family Integration Center.

4. Medical, psychological and psychiatric assistance for Sebastián Furlan and his family

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[218] *Cf.* Report of Hospital Evita before the Criminal Court No. 5 of San Martin of March 15, 1994 (file of appendices to the report, volume II, page 776).

[219] *Cf.* Report of the forensic examiner Luis Oscar Paulino of March 23, 1994 (file of appendices to the report, volume II, page 801).

[220] *Cf.* Communication of the secretary of the Criminal Court No. 5 of San Martin of March 25, 1994 (file of appendices to the report, volume II, page 807).

[221] *Cf.* Medical Records of Sebastián Furlan issued by Hospital Evita of April 7, 1994 (file of appendices to the report, volume II, page 813). In addition, the following recommendations were made: i) monitoring and follow-up treatment for the father; ii) treatment and monitoring for the mother; iii) social monitoring of the family situation, and iv) psychological treatment for Sebastián Furlan to enable him to decide what he wants to study and which activities he wants to perform.

[222] *Cf.* Report of the forensic examiner Luis Oscar Paulino of April 11, 1994 (file of appendices to the report, volume II, page 827).

[223] *Cf.* Report of the Family Investigation Center of May 8, 1994. (file of appendices to the report, volume II, page 887)

[224] *Cf.* Brief of the District Mental Health Officer, Inés Susana Alfonso, of May 18, 1994, and brief of the Main Prosecutor of Prosecution Department No.3 Fiscal Agent of the District Attorney's Office, Juan Agustin de Estrada, of May 18, 1994, before Criminal Court No. 5 of San Martin, of Buenos Aires Province. (file of appendices to the report, volume II, pages 892, 896)

[225] *Cf.* Decision issued by judge Juan Carlos Sorondo of the Criminal Court No. 5 of San Martin of May 19, 1994 (file of appendices to the report, volume II, page 907).

111. The facts related to the medical treatment received by Sebastián Furlan over the years fall within the factual account regarding: i) the care received immediately after the accident in 1988 (*supra* paras. 73 and 74); ii) medical attention received after the suicide attempt on August 31, 1989 (*supra* para. 76), iii) psychiatric care received in the context of the criminal proceedings against him (*supra* paras. 107,109 and 110) and iv) medical assessments performed in the civil suit for damages (*supra* paras. 94 to 96).

112. Additionally, during the process before the Inter-American Commission, the State offered to devise what it termed "a humanitarian solution," whereby it sought to assess the possibility of providing assistance with health care, and eventually the provision of a disability pension to help support Sebastián Furlan (*infra* para. 114).[226]

113. On January 4, 2005 the Minister of Defense sent a note to Chief of Staff of the Army in which he requested "that it order everything necessary for the Hospital Militar Central to provide the health assistance recommended by the Inter-American Commission […] in the 'Case of Furlan, until it is determined which government agency will be responsible.'"[227] On January 11, 2005 the General Secretariat of the Army "asked Mr. Danilo Pedro Furlan to go to the headquarters of General Staff of the Army."[228] On January 14, 2005 "Mr. Furlan, accompanied by his son Sebastián, went to said [Hospital], where he expressed his wish to withdraw from the treatment he had requested due to his family's resistance to participate in the different specialized practices of the Psychiatric Service."[229]

E) Pension granted to Sebastián Furlan

114. On August 26, 2009 after several attempts to obtain a pension[230] Sebastián Furlan

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[226] Memorandum of December 20, 2004 signed by the Ministry of Defense (file of appendices to the response, appendix II, pages 3345 and 3346). Under this initiative, on December 17, 2004, a meeting was held with "representatives of the Human Rights Secretariat, the Ministry of Foreign Affairs", the Ministry of Defense, representatives of the Inter-American Commission on Human Rights, including commissioner Florentín Meléndez and Mr. Danilo Furlan. During this meeting they discussed the possibility of providing "access to psychological treatment at the Hospital Militar Central […] for Sebastian and his family members."

[227] Brief of January 4, 2005 of the Ministry of Defense (file of appendices to the response, appendix III, page 3348).

[228] Brief of February 1, 2005 signed by the State-General Staff of the Army (file of appendices to the written brief containing pleadings, appendix IV, page 3352 and 3353). On January 12, 2005 it was recorded "that the Forces would provide him with psychological and psychiatric care, also to his immediate family group at the […] Central Military Hospital" and "the Hospital was ordered […] to take appropriate steps to provide assistance to the plaintiff, and to immediately begin the appropriate psychiatric and psychological treatment."

[229] Brief of February 1, 2005 signed by the Army's Chief of General Staff (file of appendices to the response, appendix IV, pages 3352 y 3353) and brief of January 14, 2005 of Danilo Furlan (file of appendices to the response, appendix VI, pages 3357 and 3358). Mr. Danilo Furlan submitted a brief addressed to the Undersecretary of technical military affairs, in which he indicated that he was discontinuing his treatment because a: i) "he fe[lt] like an intruder who was being questioned," and he also "fe [lt] that [his] presence bothered [the doctor]" and that doctor "asked whether everything that was going to be done there would be communicated [by Mr. Danino Furlan] to the [Inter-American Commission]"; ii) "[his] son does not want to have anything more to do with doctors, hospitals, internments or medications, that many years have passed (16) and he still has terrible memories of the psychiatric-judicial-police treatment, where [they were] treated worse than criminals"; and iii) "the decision by [his] ex-wife and [his] son Claudio, apart from those memories, was also due to the distance of the [Hospital] from their homes."

[230] On July 9, 2001 Mr. Danilo Furlan informed the judge that he had asked his attorney about the possibility of a pension for Sebastián and that he "confirmed what [the judge] had told him, that pensions are granted only in cases where the disability is more than 76% and that [his] son's disability is 70%". *Cf.* Brief of July 7, 2001 presented by Danilo Furlan (file of appendices to the Report on Merits, volume IV, page 1969). On July 18, 2001 Mr. Danilo Furlan asked the judge if there was some "solution" for "these cases", such as, for instance, "a special

again submitted a request for a non-contributory pension for disability.[231] This application was processed in accordance with "Law No. 18,910 [and] Regulatory Decree No. 432/97."[232] For this purpose he presented an official medical certificate, certifying that he had 80% disability due to moderate mental handicap.[233] On December 16, 2009 the National Commission for Social Welfare Pensions of the Ministry of Social Development concluded that the right invoked before the competent national authorities had been accredited.[234]

115. Sebastián Furlan currently receives a pension, as well as benefits for his children Diego and Adrián. The net sum he received monthly, in 2011, was $ 1933.66 Argentine pesos, for the following items: a monthly pension of $859.44 for Sebastián Furlan; a benefit for each child with disability of $880.00 and a benefit per child under age $220.00[235]. Sebastián Furlan received his Single Disability Certificate on September 23, 2008, valid for ten years. [236]

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pension, […] something that really works." *Cf*. Brief of July 18, 2001 submitted by Danilo Furlan (appendices to the report, volume IV, page 1979). On November 21, 2004 Mr. Danilo Furlan informed the Inter-American Commission that he had spoken to the Undersecretary of Technical Military Affairs, of the Human Rights Division, who "told him to call in 30 days, that they were considering "some kind of pension; but that was the same thing [he] had said several months before." *Cf.* Brief of November 21, 2004 submitted by Danilo Furlan (file of appendices to the Report on Merits, volume IV, page 1675). In the brief of January 10, 2005 addressed to the Ministry of Foreign Affairs, Mr. Danilo Furlán stated that "he receiv[ed] a telephone call from the National Commission for Social Welfare Pensions […] to inform him about the process for applying for [his] son's pension and told [him] the following: [his] son must have a permanent disability of at least 76% (he has 70%) [and] that neither he or [his father] should have assets (a property or a care in [their] name, and that [the father] cannot work or have a job in a relationship of dependence)". *Cf*. Brief of January 10, 2005 submitted by Danilo Furlan (file of appendices to the Report on Merits, volume IV, page 1621). In the briefs of May 23, June 10, August 4, August 11 and September 2, 2005, Mr. Danilo Furlan asked the President of the Republic for help to obtain a pension, since he understood that he did not fulfill the legal requirements to qualify for a contributive pension and medical treatment for his son. *Cf*. Brief of 23 de mayo de 2005 submitted by Danilo Furlan (file of appendices to the Report on Merits, volume IV, page 1563). On December 9, 2005 the Ministry of Social Development informed Danilo Furlan of the specific legal requirements to obtain a contributive pension. Note No. 875/SCG/05 issued on December 9, 2005 by the National Commission for Social Welfare Pensions of the Ministry of Social Development of Argentina (file of appendices to the response, appendix XXI, page 3403). On May 11, 2006 the Ministry of Defense turned down a request for a pension similar to that granted to veterans of the Falkland Islands. *Cf.* brief of the Ministry of Defense of May 11, 2006 (file of appendices to the report, volume IV, pages 1485 and 1486).

[231] *Cf.* Pension application signed by Sebastian Furlan of August 26, 2009 (file of appendices to the brief containing pleadings and evidence, volume V, page 2412), including administrative case file No. 041-20-23838444-4-055-1 through which the application for a non-contributory pension due to disability was processed and granted to Sebastian Claus Furlan. File of the application for a non-contributory pension of the National Commission for Social Welfare Pensions of the Ministry of Social Development (file of appendices to the brief containing pleadings and motions, volume V, appendix XIII, page 2410).

[232] Case file of the application for a non-contributory pension to the National Commission for Social Welfare Pensions of the Ministry of Social Development, page 2409.

[233] *Cf.* Medical certificate issued by the Ministry of Health on November 23, 2008 (file of appendices to the brief of pleadings and evidence, volume V, page 2422) and medical assessment certificate issued by the Hospital Nacional Posadas January 8, 2009 (file of appendices to the brief of pleadings and evidence, volume V, page 2422).

[234] *Cf.* Communication of the National Commission for Social Welfare Pensions of the Ministry of Social Development of December 16, 2009 (file of appendices to the brief of pleadings and evidence, volume V, page 2454).

[235] *Cf.* Socio-environmental report prepared by Marta Celia Fernández (file of appendices to the brief of pleadings and evidence, volume V, page 2464).

[236] *Cf.* File of the application for a non-contributory pension of the National Commission for Social Welfare Pensions of the Ministry of Social Development, page 2422.

F) Current status of Sebastián Furlan

116. Sebastián Furlan finished high school "at the age of thirty."[237] However, his accident affected "his opportunities for educational development" and "his potential relationships with peers." Specifically, there is evidence of the "enormous difficulties that he has experienced throughout these years to get a decent job that correspond[ed] to the social and assistance benefits in accordance with the labor law."[238] Currently, "Sebastián works selling perfumes [...] on his own and in the streets" and "never ha[d] a formal job."[239]

117. Sebastián Furlan now lives with his partner, Laura Alicia Sarto and his two sons, Diego Germán and Adrián Nicolás.[240] The family income consists of Sebastián Furlan's disability pensions (*supra* para. 115) and the "small amount that [Sebastián] makes on perfume sales." In this regard, a social-environmental report on this family unit concluded that "[t]he analysis of the household and observations demonstrat[ed], in terms of 'livability,' the serious difficulties faced both by Sebastián and by his family" given that the house "does not meet the basic standards for performing daily activities."[241]

118. Finally, the most recent medical assessments[242] of Sebastián Furlan indicate: i) "failures in problem-solving (difficulties in learning to do new things […] difficulty in making future plans, difficulty in doing things in order," among others; ii) "attention difficulties (easily distracted [or] needs to pay more attention and make greater efforts to perform tasks and lack of attentiveness)," iii) "memory problems (forgets what he had planned to do, forgets commitments and forgets where he puts things)," and iv) "practical difficulties (to draw or copy), difficulty when expressing thoughts and slow speech." Moreover, they identified "fine motor problems, unsteadiness of gait, balance problems and he bumps into things often." They also detected "problems with abstract thinking, speed of information processing and poor self-monitoring of his behavior and responses." Similarly, they observed "difficulties in the initial assimilation of new information" which is reflected in the "storage and long-term recalling of information." It was concluded that the "cognitive profile shows mild to moderate attention-executive dysfunction."

119. Similarly, the medical reports described Sebastián as "an adult who has difficulty in focusing his attention and executive functions, evident in the problems with abstract thinking, speed of information processing, poor self-monitoring of his behaviors and responses. He also has memory problems that interfer[e] with the acquisition of new information." Regarding Sebastián's daily life, these concluded that "daily life activities are

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237 Social-environmental report prepared by Marta Celia Fernández, pages 2458 to 2469.

238 Social-environmental report by Marta Celia Fernández, pages 2458 to 2469.

239 Social-environmental report by Marta Celia Fernández, pages 2458 to 2469.

240 Social-environmental report by Marta Celia Fernández, pages 2458 to 2469.

241 According to the social-environmental report by Marta Celia Fernández, Sebastian Furlan is continues to live in Ciudadela Norte, an area which, as previously mentioned, is middle lower class and lower class. The report describes house as having "flimsy walls and the roof [was] clearly in a state of disrepair, [with] leaks contributing to the characteristic humidity of the place and caus[ing] its poor state. The report added, "the room used by the family as a bedroom [was] of an inadequate size, not suited to the number of family members who [slept] there." "It looked very untidy due to the small space and the large number of belongings that were kept there." The report concluded that possible reparations to the house "would really be insufficient given the prevailing conditions in the place."

242 Report issued by the Centro de Estudios de la Memoria and la Conducta (Center for Memory and Behavior Studies) of July 18, 2011 (file of appendices to the brief of pleadings and motions, volume 5, pages 2470 to 2476).

very complicated for him, he cannot finish planning and executing tasks that would allow him to live a full life [and he functions] as a [d]isabled person who needs supervision of his actions."[243]

120. As to Sebastián Furlan's state of mind, his "symptoms are consistent with moderate depression," including "feelings of guilt and indecisiveness." These symptoms include "moderate pessimism, feelings of failure, dissatisfaction with himself and ideas of death."

VII
RIGHT TO A FAIR TRIAL, RIGHT TO JUDICIAL PROTECTION AND RIGHT TO PROPERTY IN RELATION TO THE RIGHTS OF THE CHILD, RIGHTS OF PERSONS WITH DISABILITIES AND THE RIGHT TO EQUALITY

121. This chapter begins with some preliminary considerations regarding the legal age of Sebastián Furlan and the rights of children and persons with disabilities. Subsequently the disputes concerning the issue of reasonable time[244] in the civil proceedings will be analyzed, to then determine the matters related to the right to be heard in the proceedings and the rights to judicial protection[245] and to property[246], other judicial guarantees in dispute, the right to personal integrity[247] and access to a fair trial, in relation to the obligations to respect and guarantee, in particular, the principle of non-discrimination.[248]

A) Preliminary consideration regarding the legal age of Sebastián Furlan

122. The representatives requested that "for the purposes of this case, Sebastián Furlan [be] considered a child until 21 years of age," given that the regulations in force in Argentina "at the time of the facts, established that legal age was acquired at 21 years." The Commission and the State presented no arguments on this point.

123. In this regard, the Inter-American Court has established that, in general, the term

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[243] Affidavit rendered by Doctor Estela del Carmen Rodríguez on February 10, 2012 (case file on Merits, volume II, pages 747 to 766).

[244] Article 8(1) of the American Convention establishes that: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. […]".

[245] Article 25(1) of the American Convention establishes that: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties." Article 25(2)c) of the Convention establishes that the States undertake "to ensure that the competent authorities shall enforce such remedies when granted."

[246] Article 21(1) of the Convention establishes that: "Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interests of society."

[247] Article 5(1) of the American Convention establishes that: "Every person has the right to have his physical, mental, and moral integrity respected."

[248] Article 1(1) of the American Convention establishes that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction, the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

"child" refers to any person who has not yet turned 18 years of age.[249] Notwithstanding the above, the Court notes that at the time of the facts in question, Article 126 of the Civil Code of Argentina was in effect, which established that "minors are those persons who have not reached the age of twenty one,"[250] therefore, and in application of the principle *pro persona* (Article 29(b) of the Convention), in the instant case it will be understood that Sebastián Furlan acquired legal age when he turned 21 years old, namely on June 6, 1995.

2. Preliminary considerations on the rights of children and of persons with disabilities

124. First, the Court notes that in the instant case, the alleged violations of the rights enshrined in the American Convention are in relation to the fact that Sebastián Furlan was a child at the time of the accident and that, consequently, this accident resulted in his becoming an adult with disabilities. Taking these two facts into account, the Court considers that the alleged violations must be analyzed in light of: i) the international body of law on the protection of children, and ii) the international standards on the protection and guarantee of the rights of persons with disabilities. These two legal frameworks should be considered as cross-references in the analysis of the instant case.

B.1. Rights of children

125. Throughout this Judgment the Court will consider the alleged violations of rights involving a minor, which will be considered in accordance with the international *corpus juris* on the protection of children. [251] As indicated by the Court on previous occasions, this body of law should help establish the content and scope of the State's obligations when analyzing the rights of children.[252] In this regard, children are entitled to the rights in the American Convention, in addition to the special measures of protection contemplated in Article 19, which shall be defined according to the specific circumstances of each case.[253] The adoption of special measures for the protection of the child corresponds both to the State and to the family, community and society to which the child belongs.[254]

126. Furthermore, any decision by the State, society or family that involves any limitation of the exercise of any right of a child must take into account the best interests of the child and adhere strictly to the provisions governing this matter.[255] With regard to the best interests of the child, the Court reiterates that this regulating principle regarding the rights of children is based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their

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249 *Cf. Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, para. 42

250 Article 126 of the Civil Code of Argentina, prior to the amendment made by Law 26.579 enacted on December 2, 2009. (file of appendices to the pleadings and motions brief, volume VII, page 3154).

251 *Cf. Case of Forneron and daughter v. Argentina*, para. 44.

252 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 194, and *Case of Forneron and daughter v. Argentina* para.44.

253 *Cf.* Case of *Gelman v. Uruguay*. *Merits and Reparations.* Judgment of Feburary 24, 2011 Series C No. 221, para. 121, and *Case of Forneron and daughter v. Argentina*, para. 44.

254 *Cf.* Advisory Opinion OC-17/02, para. 62, and *Case of Forneron and daughter v*. *Argentina*, para. 45.

255 *Cf.* Advisory Opinion OC-17/02, para. 65 and *Case of Forneron and daughter v*. *Argentina,* para.48.

potential. Likewise, it should be noted that to ensure, to the greatest extent possible, the prevalence of the best interests of the child, the preamble of the Convention on the Rights of the Child establishes that children require "special care" and Article 19 of the American Convention states that they must receive "special measures of protection." [256] In this regard, it is necessary to consider not only the requirement of special measures but also the specific characteristics of the child's situation.[257]

127. The Court has also held that, in view of the importance of the interests under consideration, administrative and judicial procedures concerning the protection of the human rights of the child, particularly those legal proceedings related to adoption, guardianship and custody of boys and girls in early childhood, should be handled by the authorities with exceptional diligence and celerity.[258]

B.2. Children and persons with disabilities

128. Since the creation of the Inter-American System, in the American Declaration on the Rights and Duties of Man, adopted in 1948, the rights of persons with disabilities have been protected.[259]

129. In subsequent decades, the Additional Protocol to the American Convention on Economic, Social and Cultural Rights ("Protocol of San Salvador")[260] stated that "everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality."

130. Later, in 1999, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities[261] (hereinafter "CIADDIS") was adopted, which stated in its Preamble that States Parties reaffirm "that persons with disabilities have the same human rights and fundamental freedoms as other persons; and that these rights, which include freedom from discrimination based on disability, flow from the inherent

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256 *Cf.* Advisory Opinion OC-17/02, para. 60, and *Case of Atala Riffo and daughters v. Chile. Merits and Reparations and Costs.* Judgment of February 24, 2012. Series C No. 239, para. 108.

257 Advisory Opinion OC-17/02, para. 61, and *Case of Forneron and daughter v*. *Argentina,* para. 45.

258 *Cf. Matter of L.M.* Provisional Measures regarding Paraguay. Order of the Inter-American Court of Human Rights of July 1, 2011, Considering 16 and *Case of Forneron and Daughter v*. *Argentina,* para. 51.

259 Article XVI of the American Declaration on the Rights and Duties of Man states: Every person has the right to social security which will protect him from the consequences of unemployment, old age and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

260 Article 18 (Protection of the Handicapped) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador" establishes: Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to: a. Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal, including work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be; b. Provide special training to the families of the handicapped in order to help them solve the problems of coexistence and convert them into active agents in the physical, mental and emotional development of the latter; c. Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans; d. Encourage the establishment of social groups in which the handicapped can be helped to enjoy a fuller life.

261 Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities, AG/RES. 1608 (XXIX-O/99).

dignity and equality of each person." In addition, this Convention established a list of obligations that States must comply with in order to achieve "the prevention and elimination of all forms of discrimination against persons with disabilities and to promote their full integration into society."[262] This Convention was ratified by Argentina on January 10, 2001[263]. Recently, the OAS General Assembly approved the "Declaration on the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (2006-2016)."[264]

131. Moreover, in the universal system the Convention on the Rights of Persons with Disabilities (hereinafter "CRPD") entered into effect on May 3, 2008, establishing the following guiding principles on this matter:[265] i) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; ii) non-discrimination; iii) full and effective participation and inclusion in society; iv) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; v) equality of opportunity; vi) accessibility; vii) equality between men and women; and viii) respect for the evolving capacities of children with disabilities and the right of children with disabilities to preserve their identity. Argentina ratified this Convention on September 2, 2008[266].

132. CIADDIS defines the term "disability" as "physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment," [267] whilst the CRPD established that persons with disabilities "include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[268]

133. In this regard, the Court notes that in the aforementioned Conventions the social model for disability is taken into account, which implies that disability is not only defined by the presence of a physical, mental, intellectual or sensory impairment, but is interrelated with the barriers or limitations that exist socially for persons to exercise their rights effectively. The types of limitations or barriers commonly encountered by people with

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262 Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.

263 Information available on the Web site of the Department of International Law of the Organization of American States at the following link: http://www.oas.org/juridico/spanish/firmas/a-65.html, consulted for the last time on August 31, 2012. See also, Merits file, volume II, page 225.

264 AG/DEC. 50 (XXXVI-O/06) Adopted at the fourth plenary session held on June 6, 2006. This resolution was adopted under the motto: "Equality, Dignity, and Participation," in order to achieve the recognition and full exercise of the rights and dignity of persons with disabilities and their right to participate fully in economic, social, cultural and political life and in the development of their societies, without discrimination and on an equal basis with others."

265 Article 3 of the Convention on the Rights of Persons with Disabilities

266 Information available on the United Nations web site at the link: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en, last consulted on August 31, 2012. This Convention was approved through Law 26.378, which was ratified on May 21, 2008 and promulgated in June 6, 2008 (file of appendices to brief of pleadings and motions volume VII, page 3233).

267 Article I of Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities.

268 Article I of the CPDP

functional diversity in society are, among others, [269] physical or architectural[270] types of barriers, communication,[271] attitudinal[272] or socioeconomic[273] barriers.

134. In this regard, the Inter-American Court reiterates that any person who is in a vulnerable situation is entitled to special protection, based on the special duties that the State must comply with to satisfy the general obligation to respect and ensure human rights. The Court calls to mind that it is not sufficient for States to refrain from violating rights, and that it is imperative to adopt affirmative measures to be determined according to the particular protection needs of the subject of rights, whether on account of his personal situation or his specific circumstances,[274] such as disability.[275] Moreover, States have the obligation to promote the inclusion of persons with disabilities through equality of conditions, opportunities and participation in all spheres of society[276] to ensure that the limitations described above are removed. Consequently, it is necessary for States to promote social inclusion practices and adopt affirmative measures to remove such barriers.[277]

135. The Court also considers that people with disabilities are often subject to discrimination because of their condition; therefore, States must adopt the appropriate legislative, social,[278] educational,[279] employment[280] or other measures necessary to prevent

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269 *Cf.* Committee on the Rights of the Child, General Comment No. 9, The rights of children with disabilities, CRC/C/GC/9, 27 of February 27, 2007, para. 5 ("The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives.").

270 General Comment No. 9, para. 39. "The physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including health and education."

271 General Comment No. 9, para. 37 "Access to information and means of communication, including information and communication technologies and systems, enables children with disabilities to live independently and participate fully in all aspects of life."

272 UN General Assembly, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 0A/RES/48/96, March 4, 1994, 85th plenary meeting, para. 3. "In the disability field, however, there are also many specific circumstances that have influenced the living conditions of persons with disabilities. Ignorance, neglect, superstition and fear are social factors that throughout the history of disability have isolated persons with disabilities and delayed their development."

273 *Cf. Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs.* Judgment of July 4, 2006. Series C No. 149, para. 104. *Cf.* also Article III.2 of the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, and Committee on Economic, Social and Cultural Rights, General Comment No. 5, "Persons with Disabilities." U.N. Doc. E/C.12/1994/13 (1994), September 12, 1994, para. 9.

274 *Cf. Case of the "Massacre of Mapiripán" v. Colombia. Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 134, paras. 111 and 113, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 27, 2012. Series C No. 245, para. 244.

275 *Cf. Case of Ximenes López v. Brazil*, para. 103.

276 *Cf.* UN General Assembly Standard Rules on the Equalization of Opportunities for Persons with Disabilities

277 Committee on Economic Social and Cultural Rights, General Comment No. 5, para. 13.

278 By way of an example, it emphasizes that "under the general principles of international human rights law," persons with disabilities have the right "to marry and have their own family. These rights are frequently ignored or denied, especially in the case of persons with mental disabilities." Committee on Economic Social and Cultural Rights, General Comment No. 5, "Persons with Disabilities." United Nations, Document E/1995/22 (1994), para. 30. Similarly, Rule 9(2) of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities establishes that: "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Taking into account that persons with disabilities may experience

all discrimination associated with mental disabilities, and to promote the full integration of such persons into society.[281] Appropriate access to justice plays a fundamental role to address these types of discrimination.[282]

136. Regarding the strengthened obligations of States in relation to children with disabilities, the CRPD established that:[283] i) "States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children"; ii) "in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration"; and iii) "that children with disabilities h[ave] the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right." Meanwhile, General Comment No. 9 states that "the leading principle for the implementation of the Convention with respect to children with disabilities [is] the enjoyment of a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate active participation in the community."[284]

137. Likewise, the CRPD contains a specific article on the scope of the right to access to justice and the obligations that States must assume regarding people with disabilities. In particular, it establishes that[285]: i) States Parties shall ensure effective access to justice for

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difficulties in getting married and setting up a family, States should encourage the availability of appropriate counseling."

279 In this regard, it is worth noting that "children with disabilities have the same right to education as all other children and shall enjoy this right without discrimination on the basis of equal opportunity, as stipulated in the Convention." Furthermore, "inclusive education should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system." General Comment No. 9, paras. 62 and 66. Also, "the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities [imply that they must take place] in integrated settings." Art. 6, the Standard Rules on Equalization of Opportunities.

280 In this regard, "the integration of persons with disabilities into the regular labour market should be actively supported by States." Committee on Economic Social and Cultural Rights, General Comment No. 5, "Persons with Disabilities." United Nations, Document E/1995/22 (1994), para. 20. Similarly, "in both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market." General Assembly of the UN, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 0A/RES/48/96, March 4, 1994, Forty-eighth session, Rule 7. See also: ILO Convention No. 159 (1983) on Vocational Rehabilitation and Employment (Disabled Persons), Recommendation No. 99 (1955) concerning the vocational rehabilitation of disabled persons, and Recommendation No. 168 (1983) on employment of disabled persons.

281 *Cf. Caso Ximenes Lópes Vs. Brazil*, para. 105. See also Article I.2.of the American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, which states: The term "discrimination against persons with disabilities" means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms." Similarly, Article 2(1) of the Convention on the Rights of the Child states: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's […] disability, […] or any other status.

282 Article 13 of the Convention on the Rights of Persons with Disabilities specifies various points regarding access to justice for persons with disabilities.

283 Article 7 of the Convention on the Rights of Persons with Disabilities.

284 Committee on the Rights of the Child, General Comment No. 9, para. 11.

285 *Cf. Article* 13 of the CRPD.

persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages, and ii) States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

138. Likewise, the Convention on the Rights of the Child requires States to adopt special measures of protection with regard to health[286] and social security[287], which should be even greater for children with disabilities.[288] Regarding children with disabilities, the Committee for the Rights of the Child has stated that:

> Attainment of the highest possible standard of health as well as access and affordability of quality healthcare is an inherent right for all children. Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility due to the lack of information and/or financial resources, transportation, geographic distribution and physical access to health care facilities.[289].

139. Having established these general standards, the Court considers that since Sebastián was a child and is currently an adult with disabilities, it is necessary to analyze the dispute between the parties based on an interpretation of the rights of the American Convention and their related obligations, in light of the special protection measures stemming from those standards. This framework provides mechanisms to guarantee and adequately protect the rights of persons with disabilities, in conditions of equality, taking into account their specific needs.

C) Reasonable term

Arguments of the parties and of the Inter-American Commission

140. The Commission argued that the State is responsible for the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Sebastián and Danilo Furlan, due to "the unwarranted delay in the civil proceedings for damages."

141. The representatives alleged that the State violated "Articles 8(1) and 25 in relation to Articles 1(1), 2 and 19 [of the American Convention] and the corresponding articles of the Convention on the Rights of the Child (Arts. 2, 3, 12" given that it did not take the measures necessary to offer Sebastián Furlan and his family "a prompt, timely, and effective remedy," thereby violating the guarantees of due process and the right to adequate legal protection." They added that this situation was aggravated by the failure to comply with "the duty to provide Sebastián Furlan with the special measures of protection that he required as a child with a disability."

142. The State asked the Court to declare "that it has not violated Articles 8 and 25 of the Convention, inasmuch as "the delays that [...] occurred in the framework of the civil proceedings [for damages], were not attributable to the State of Argentina."

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286 *Cf. Article* 24 Convention on the Rights of the Child.

287 *Cf. Article* 26 Convention on the Rights of the Child.

288 *Cf. Article* 23 Convention on the Rights of the Child.

289 Committee on the Rights of the Child, General Comment No. 9, para. 51.

143. The Court must determine, in light of the facts of the instant case, whether the civil proceedings for damages and the subsequent collection of the compensation exceeded the reasonable term. For this purpose it shall first determine the period of time that it will consider for the analysis.

C.1) Time frame of the proceedings

Arguments of the parties and of the Inter-American Commission

144. The Commission argued that there was "an unwarranted delay in the suit for damages, which took ten years until the final judgment was rendered, and then another two years until the award in bonds was credited."

145. The representatives argued that "to determine the reasonableness of the term to obtain an effective judicial response it is necessary to add the time that it took for the bonds in favor of Sebastián Furlan to become available," given that there was "a delay in the administrative process for executing the title documents of the bonds." They indicated that "over 1 year and 9 months elapsed" from the time of the request for collection of the bonds until their final receipt, and they claimed that during this time "they followed a bureaucratic administrative process, plagued with unwarranted delays and characterized by the exclusive participation of the State's administrative bodies."

146. The State did not refer specifically to the length of time that the Court should take into account for the analysis of the reasonable term.

Considerations of the Court

147. The Court confirms that on December 18, 1990 Mr. Danilo Furlan filed suit in the civil courts against the State of Argentina (supra para. 78), and that these proceedings ended with the judgment of first instance issued on September 7, 2000 (*supra* para. 99). This judicial decision was upheld on appeal through the ruling of November 23, 2000 by the First Chamber of the National Court of Federal Civil and Federal Commercial Matters (*supra* para. 101).

148. The Court also notes that, once the final judgment was rendered, the alleged victim had to begin an administrative proceeding to obtain the indemnity ordered by the court. To this end, on June 7, 2001 Sebastián Furlan's representative initiated a process before the General Accounting Department of the Argentinean Army the steps to obtain the compensation (*supra* para. 104), which ended on March 12, 2003 with the payment of the bonds to the beneficiary (*supra* para. 105). In this regard, the Court notes that the civil proceedings for damages lasted 9 years, 11 months and 5 days until the final judgment, which was followed by the enforcement phase of the judgment in order to obtain the compensation awarded in the judicial decision. The latter stage lasted 1 year, 9 months and 7 days until effective payment of the compensation.

149. Regarding the enforcement phase of judicial decisions, this Court has recognized that the failure to enforce judgments "is directly related to the effective judicial protection for the enforcement of domestic decisions:"[290] consequently, it has made its analysis in light of

[290] Cf. *Case of Mejía Idrovo v. Ecuador*, para. 84.

Article 25 of the American Convention.[291] However, the Court considers that the analysis of the enforcement phase of judgments can also be addressed in accounting for the duration of proceedings, in order to determine its impact on prolonging the reasonable term of the proceedings.[292]

150. In fact, the European Court on Human Rights has repeatedly indicated that "enforcement proceedings must be regarded as the second stage of the proceedings."[293] Similarly, in the case of *Silva e Pontes Vs. Portugal*, the Court established that the guarantees established in Article 6 of the European Convention apply both to the first stage of the proceedings as well as to the second.[294] In addition, in the case of *Robins Vs. United Kingdom* said Court concluded that all stages of the proceedings for the determination of civil rights and obligations, "not excluding stages subsequent to judgment on the merits," shall be resolved within a reasonable time.[295]

151. Accordingly, this Court considers that the main purpose for which the alleged victim filed a civil suit was to obtain compensation for damages; therefore, for the purposes of analyzing the reasonable term, said proceedings cannot be considered completed until that purpose is materialized.[296] Similarly, the Court considers that the term for the enforcement

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[291] Cf. *inter alia*, *Case of the Five Pensioners v. Peru,* para. 138, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2009. Series C No. 198, para. 77.

[292] *Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, para. 220.

[293] *Cf.* ECHR *Case of Di Pede v. Italy,* (No. 15797/89) Judgment of August 29, 1996, para. 24; *Case of Silva e Pontes v. Portugal,* (No. 14940/89) Judgment of 23 March 1994, para. 33; *Case of Zappia v. Italy,* (No. 24295/94)Judgment of 29 August 1996*,* para. 20. The European Court analyzed the reasonable term for proceedings originating from breach of a contract for the sale of an apartment under construction. The proceedings ended in a final and firm judgment, and was followed by the procedure for enforcement of this judicial decision; *Case of Cochiarella v. Italy,* (No. 64886/01), G.C. Judgment of 29 March 2006, para. 88. The European Court issued rulings in ten cases where the plaintiffs were Italian citizens requesting reparation in Italian courts within the framework of the "*Pinto Act*" (Law Nº. 89 of March 24, 2001) for the losses incurred due to excessive delays in the proceedings to which they were parties in the national courts.

[294] *Cf.* ECHR *Case of Silva e Pontes v. Portugal,* para. 36. The European Court analyzed the reasonable term for proceedings for damages originating from a traffic accident. On this occasion the proceeding ended with a Judgment that ordered the payment of compensation to the plaintiffs, and was followed by an enforcement phase to achieve effective payment of the award. ("There can be no doubt that Article 6 (art. 6) applies to the first stage of the proceedings and, having regard to its reasoning in relation to the preliminary objection, the Court is of the view that the same must be true of the second stage").

[295] *Cf.* ECHR *Case Robins v. United Kingdom,* (No. 22410/93), Judgment of September 27, 1997, paras. 28 and 29. The European Court analyzed the reasonable term of proceedings arising from a dispute between neighbors, which although it ended in a final and firm judgment, required a subsequent process to establish the costs of the proceedings. ("The Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time") ("the costs proceedings, even though separately decided, must be seen as a continuation of the substantive litigation and accordingly as part of a "determination of ... civil rights and obligations").

[296] *Cf. mutatis mutandis,* ECHR *Case of Di Pede v. Italy, para. 31.* The European Court ruled on this point in the context of the analysis of reasonable term of a judicial process that ended in a judge's order to demolish works that caused damages to the neighbors. The enforcement of this order was partially executed; hence, the Court deemed that the proceedings had not been finalized. *(*"Lastly, the Government's contention that the case has been discontinued cannot be accepted; it is hard to understand how the case could have been discontinued while part of the works had still not been carried out").

of the judicial decision to effectively collect the compensation in the instant case is part of the proceedings[297] and shall be taken into account to analyze the reasonable term.

152. Based on the foregoing, the period that will be analyzed in the instant case starts on December 18, 1990 and ends on March 12, 2003, in other words, approximately 12 years and three months. Having determined the duration of the proceedings, the Court will apply the reasonable term assessment, analyzing four elements that the case law has established to determine the reasonableness of the length of time of the proceeding: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities,[298] and d) adverse effect of the duration of proceedings on the judicial situation of the interested party.[299]

C.2) Complexity of the matter

Arguments of the parties and of the Inter-American Commission

153. With respect to the first element, namely, the complexity of the matter, the Commission noted that the case "does not involve a high degree of complexity, inasmuch as it is a civil suit for damages, wherein the only thing to be determined was: i) "whether the damages occurred; ii) whether that act can be attributed to the State, and iii) once responsibility is ascribed, proceed to execute the judgment." It added that "the purpose of the civil proceedings that were brought was to determine whether a State entity was responsible or not for damages done to one person."

154. The representatives indicated that "the suit for damages was not very complex, since it was only necessary to determine that damages had occurred, and to establish whether those damages were attributable to the State." In addition, "the evidence offered and produced was not complex either," insofar as "it was only necessary to perform two medical assessments on Sebastián [Furlan] and receive the statements of witnesses to the facts."

155. The State did not refer specifically to the issue of complexity of the matter in the instant case.

Considerations of the Court

156. This Court has taken into account several criteria to determine the complexity of

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[297] In this regard, see ECHR, *Case of Immobiliare Saffi v. Italy,* (No. 22774/93), G.C. Judgment of 28 July 1999*,* para. 63. In this Case the European Court ruled on the reasonable term of judicial proceedings aimed at recovering ownership of a leased building. The company Immobiliare Saffi, owner of the building where the lessee refused to leave in spite of numerous attempts, claimed that the judicial agents were unable to enforce the order, and it only recovered ownership when the lessee passed away. In this case, the Court concluded that: "In any event, the Court recalls that the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions" and that the "[e]xecution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6.")

[298] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs.* Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 26, 2012. Series C No. 244, para. 49.

[299] *Cf. Case of Valle Jaramillo et al. v. Colombia*. *Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Díaz Peña v. Venezuela,* para. 49.

proceedings. These include the complexity of the evidence,[300] the number of procedural subjects[301] or the number of victims,[302] the time elapsed since the violation,[303] the characteristics of the remedies enshrined in the domestic body of law,[304] and the context in which the violation occurred.[305]

157. First, with regard to the characteristics or nature of the proceedings under consideration, the Court does not find evidence in the domestic laws of Argentina that would suggest that regular civil proceedings are complex *per se*. In particular, a regular judicial process is governed by Article 319 of the National Civil Procedural and Commercial Code (hereinafter "CPCCN"), which establishes the following: "General principle: all judicial disputes that have no special processing indicated shall be discussed in a regular trial, except when this Code authorizes the judge to determine the type of proceedings applicable." This means that the proceedings under which the case of Sebastián Furlan was processed is the regular process in the civil sphere, hence in principle it does not have a special process or nature.

158. Secondly, with regard to the number of procedural subjects or the number of victims, the Court observes that in this specific case, in order to comply with the purpose of the judicial proceedings, the court had to determine the damages caused to a single person, specifically, Sebastián Furlan. With regard to the complexity of the evidence that needed to be produced in the civil proceedings, the Court notes that, in general, proceedings on extra-contractual liability tend to be more straightforward, considering that the main area of discussion is demonstrating the causal link between the damages and the acts of the State, a matter which required evidence certifying the ownership of the premises where the accident occurred, and the state of neglect of those premises. Lastly, the Court notes that the civil suit for damages was presented approximately one year and eleven months after the accident occurred; thus, the amount of time that had elapsed between the event and the filing of the judicial action was not significant.

159. Consequently, and bearing in mind the preceding points, the Court considers that the case did not involve legal or evidentiary aspects or debates that would involve a degree of complexity requiring almost 12 years to respond to. Therefore, the delay in the development and execution of the civil suit for damages in the instant case cannot be justified based on the complexity of the matter.

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300 *Cf. inter alia*, *Case of Genie Lacayo v. Nicaragua*, para. 78, and *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202, para. 157.

301 Cf. *inter alia*, *Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs.* Judgment of June 24, 2005. Series C No. 129, para. 106, and *Case of López Álvarez v. Honduras. Merits, Reparations and Costs.* Judgment of February 1, 2006. Series C No. 14, para. 133.

302 Cf. *inter alia*, *Case of Baldeón García v. Peru.* para.152, *Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 155, para. 103, and *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009 Series C No. 196, para. 113.

303 *Cf. inter alia*, *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 12, 2008. Series C No. 186, para. 150, and *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 245.

304 *Cf. Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits.* Judgment of May 6, 2008. Series C No. 179, para. 83.

305 *Cf. inter alia*, *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs.* Judgment of January 31, 2006. Series C No. 140, para. 184, *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2006. Series C No. 148, para. 293, and *Case of Valle Jaramillo et al. v. Colombia*, para. 156.

C.3) Procedural activity of the interested party

Arguments of the parties and of the Inter-American Commission

160. The Commission stated that it found no "basis to attribute the inactivity to the plaintiff." It considered that although the State claimed "that […] the plaintiff responded five years later to the judge's request of November 1991 to specify against whom the complaint was directed", it was "four months after the court's request [that] the petitioner's attorney stated that the suit was directed against the Ministry of National Defense […], [and] without prejudice to that, the petitioner's attorney requested that a letter be issued to the Property Registry for it to provide information on the ownership of the property." Similarly, it referred to the procedural inactivity during the period between April 1994 and February 1996, when "the attorney for the petitioner withdrew the request [for a letter to be issued to the Property Registry]," due to the lack of response by that authority. Furthermore, it found no evidence to suggest that the alleged victim "had taken any measures or filed any motions in the domestic proceedings for the purpose of stalling or delaying the course of the proceedings." On the contrary, it noted that "the petitioner […]consistently came forth in the case, requesting the Court to proceed with the trial, and following completion of the evidentiary phase, he continually and repeatedly requested the judge to issue a judgment in the case."

161. The representatives asserted that "the plaintiff always tried to move the proceedings forward at all times" and that "there is no evidence to suggest a lack of diligence on his part." They claimed that this has been demonstrated in the fact that: i) he had to "request three times that the suit be served," while the judge "prior to the notice of suit, ordered reports from different State entities […], which were totally unnecessary." This, because "after five years and two months since the proceeding began, the suit was served without having received the information requested"; ii) he "advised the judge on the delays in the presentation of the medical expert opinions" and, iii) requested three times for a ruling to be issued.

162. The State of Argentina held that "the detailed analysis" of the proceedings shows that "the delay […] is directly due to the lack of diligence by the private attorneys who assisted Furlan." As basis for this statement it indicated that "in the first stage of the proceedings" the petitioner: i) took over 2 months after jurisdiction was established to amend the petition, and over one month after that to file a brief "requesting the continuation of the actions"; ii) "from the file there is no evidence [to show] that the letter [sent to the General Staff of the Army] to report on investigations related to the case of Furlan was prepared and processed by the attorney"; iii) the judge asked the attorney to indicate against whom the action was being brought, given "the contradictions" in which he had allegedly incurred, since "the petition filed attributed ownership of the property to the Army, and subsequently, in the addendum to the suit […] it offered as informative evidence a letter sent to the Property Registry." It added that the interested party, "just four months later, […] stated that it was filing the suit against the Ministry of National Defense and requested, as a preliminary measure, for the evidence to be offered for this purpose to be required"; iv) it took three months to prepare the letter to the Property Registry and five months to the Cadastre Office; and v) "inexplicably the attorney presented a new brief […], on November 1, 1993 […,]requesting "a new communication to be issued to the Office of Property Registry" with the data given by the Cadastre Office. This letter was prepared "the following year, in March 1994." It concluded by indicating that the State "could not have incurred in a delay in recognizing the ownership of the properties during [the] first five years, given that it had not even been notified of the petition."

163. The State referred to other events that occurred during the "second stage of the process," which allegedly delayed it and that "are attributable to the attorneys of the Furlan [family]." It indicated that: i) the attorney took over 3 months to serve notice of the petition"; ii) the settlement hearing "was suspended at the request of Furlan," so that a new date had to be set for May 8, 1997, and iii) Furlan's attorney took until "February 12, 1998 to request the appointment of expert witnesses," something that could have been done on December 18, 1997. Finally, the State argued that since "a lawsuit was filed against the State […]in the sphere of private law for its possible responsibility for matters that are outside its scope as a legal entity of a public nature," this implied that it was not processed "in the federal administrative sphere," but in the "civil and federal commercial sphere," which means that "the parties are the ones that decide to file a complaint, promote the proceedings, submit evidence, determine the purpose of the application […] and/or perform any other action contemplated in the procedural laws."

Considerations of the Court

164. The Court notes that the debate concerning the actions of the interested party focuses on two aspects: i) the time taken to specify the defendant, and ii) the procedural activity undertaken by the alleged victim in the different stages of the proceedings. Consequently, the Court will analyze these situations separately.

C.3.1. Determination of the defendant

165. In relation to the first dispute, the Court observes the following procedural actions: i) the complaint brought on June 18, 1990 by Danilo Furlan was filed "against the National State";[306] ii) the addendum to the petition filed on April 16, 1991 indicated that the complaint filed previously was "against the National State" and that the place where the accident occurred "was located in the Air Defense Artillery Group."[307] In addition, it indicated that "the National State [was] responsible given that it was the owner of the property and of the elements found therein, belonging to the National Army,"[308] and iii) on November 14, 1991 the judge asked the petitioner to state against whom the complaint was being brought, and on March 13, 1992, whereupon the petitioner's attorney responded that "it was being brought against the Ministry of National Defense" and, "without prejudice to the foregoing, and as a preliminary measure" asked for an official letter to be issued to the Property Registry in order to determine the ownership of the premises where the accident occurred, on the date thereof (*supra* para. 82).

166. In addition, the Court finds that as of March 18, 1992, the date on which the order was issued for the first time to the Property Registry (*supra* para. 82), various steps were taken to determine the ownership of the property. During these proceedings the Cadastre Department reported that it was not possible to provide the information requested regarding plot 1, and that in relation to plot 2 it belonged to the "Supreme Government of the Nation" (supra para. 83). All these steps to determine the ownership of the property were completed on February 22, 1996, the date on which the petitioner requested the judge to serve notice of the suit, and indicated that "in light of the negative outcome of the letters" and "taking into account that the suit is being brought against the occupant of the property and owner of the elements that gave rise to the accident" of Sebastián Furlan, the

306 *Cf.* Civil suit for damages filed by Danilo Pedro Furlan on December 18, 1990, page 93.

307 *Cf.* Amendment of the petition of April 16, 1991, page 109.

308 Amendment of the petition of April 16, 1991, page 111.

petitioner's attorney withdrew his request for their issuance. Consequently, in view of "the irrefutable evidence that said elements belonged to the Army" the petitioner stated that the action was "being brought against the Ministry of Defense and/or whoever proves to be responsible" for the accident (*supra* para. 84).

167. Having clarified these procedural steps, the Court notes that the information included in the initial petition and in the addendum to the petition regarding the determination of the defendant in the case, was sufficient to identify the State as the defendant, under the terms of Article 330 of the CPCCN.[309] Furthermore, the Court confirms that in the addendum to the petition the alleged victim requested as a "preliminary measure" and "without detriment" to bringing the suit against the Ministry of Defense, for an official communication to be sent to the Property Registry to determine ownership of the property. Based on this request the judge asked for clarification, and therefore on March 13, 1991 the petitioner clarified that he was bringing the suit against the Ministry of Defense. This information was reiterated on several occasions (*supra* para. 82), while the judge sent letters to different state entities such as the Cadastre Office. The party asked to withdraw its request for the informative evidence of February 22, 1996. In fact, this information was officially confirmed, at least in relation to plot 1, as it was determined that it belonged to the "Supreme Government of the Nation." Accordingly, the Court considers that the information provided by the petitioner was consistent with that provided in the previous procedural stages and gave the judge elements to consider that the defendant had been duly identified and to serve notice of the suit, under the terms of Article 338 of the CPCCN.[310]

168. In this regard, the Court does not find sufficient evidence to conclude that the interested party caused such confusion that it was not possible to identify the owner of the property and therefore to justify the delay of 3 years, 11 months and 24 days before serving notice of the suit.

C.3.2. Procedural activity of the alleged victim in the different stages of the proceedings

169. This Court reiterates that the State "in exercise of its judicial functions, has a legal obligation of its own, and therefore the conduct of the judicial authorities should not depend solely on the procedural activity of the petitioner in the proceedings."[311]

170. The Court considers that from the analysis of the evidence provided by the parties it is clear that the procedural activity of Mr. Danilo Furlan, acting on behalf of his son, and subsequently of Sebastián Furlan, consisted of several procedural stages to move forward

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[309] Article 330 regulates the "Format of the claim," and establishes that it "shall be presented in writing and contain: 1) The name and address of the applicant. 2) The name and address of the defendant. […]" *Cf.* Article 300 of the CPCCN, Law Article 330. 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).Regarding this point, the State argued that "considering the situation in an abstract manner, the information contained in the initial petition would be sufficient, in principle, [to determine the defendant party to the proceedings]." *Cf.* Appendix to the closing arguments of the State of March 28, 2012 (file on Merits, Volume III, page 1298).

[310] *Cf.* Article 338 CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981. ("Having presented the application according to the established provisions, the judge shall give notice to the defendant to appear and provide his answer within fifteen days. When the defendant party is the State, a province or municipality, the term to appear and respond to the petition shall be sixty days"). *Cf*. file of appendices to the brief of pleadings and motions, volume VII, page 3154.

[311] *Cf. Case of Salvador Chiriboga v. Ecuador,* para. 83, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru*, para. 76.

the proceedings. As evidence of this, the petitioner: i) on April 16, 1991, November 8, 1991 and February 22, 1996 requested that the suit be served (*supra* para. 80, 82 and 84); ii) on October 21, 1997 he requested the opening of the period for taking evidence (*supra* para. 90); iii) on December 16, 1997 he requested evidence to be provided (*supra* para. 90); iv) on February 12, 1998 he requested that expert witnesses be appointed; v) on December 10, 1998 he requested that the psychiatrist expert witness be summoned with a warning of removal (*supra* para. 95); vi) on February 25, 2000 he requested that the evidence be certified and that the period for taking evidence be closed (*supra* para. 97); and vii) on April 18, May 23, and August 22 he requested that a judgment be issued (*supra* para. 98).

171. Furthermore, the Court notes that the State's main argument is that the delay in the proceedings can be attributed to the representatives of the alleged victim, since they could have acted with greater diligence at certain procedural moments (*supra* para. 162). With regard to this point, the Court finds that these claims are based on the alleged delay of: i) 2 months to amend the application and one month to submit a brief requesting the continuation of the actions; ii) four months to indicate that the complaint was being brought against the Ministry of National Defense; iii) three months to prepare the letter to the Property Registry and five months to prepare the communication to the Cadastre Office; iv) four months to prepare a new letter to the Property Registry ; v) 3 months to serve notice of the suit; and vi) one month and 25 days to request the appointment of the expert witnesses. The sum of all of these terms is 22 months and 25 days, in other words, one year, 10 months and 25 days.

172. In this regard, the Court considers that the State has not demonstrated how the petitioner's conduct, in relation to each type of action, contravened or exceeded the legal limit established for procedural terms. On the contrary, the State merely enumerated the aforementioned terms (*supra* para. 162 and 163), without providing an explanation as to why the terms granted by Argentinean law for the parties to carry out these types of actions were being exceeded, for example, for preparing a letter or notifying the parties. In this regard, based on the regulations of the CPCCN, the Court finds that if all the terms or periods established for ordinary civil proceedings were complied with, these proceedings would last approximately 9 months.

173. In this regard, the expert witness Moreno stated that:[312]

> […] proceedings for damages last an average of 4 years; however, they should not last that long. These proceedings should be quicker, not only because of the procedural standards that establish the term for production of evidence and the term that the Judge has to issue the judgment, but also because these terms often fall under an operative framework of spectator judges. The truth is that a process should last no more than 2 years."

174. In this regard, the State has not shown to what extent and how likely it was that the process could have been resolved within a reasonable term had the applicant acted differently.[313] Furthermore, bearing in mind that the proceedings overall took over 12 years to complete, whereas according to expert witness Moreno it should have lasted between two to four years, and the time of the delay allegedly attributable to the plaintiff is

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[312] *Cf.* Statement of the expert witness Gustavo Daniel Moreno at the public hearing held on February 27, 2012.

[313] *Cf. mutatis mutandi,* ECHR *Muti v. Italy,* (No. 14146/88) Judgment of 22 February 1994, para. 16. In this case, the European Court analyzed the reasonable term for proceedings initiated by the plaintiff to claim a disability pension. ("[T]he Government [has] not shown that the possibility afforded to Mr Muti of speeding up the proceedings was a real one. Despite the information provided by the government, there is no proof that such a step would have had any prospects of success […]. In these circumstances, it would not appear that the applicant's alleged passivity contributed to slowing down the proceedings").

approximately one year and 11 months, the State has not justified how the petitioner's actions ended up by delaying the proceedings for another ten years.

175. Based on the foregoing, the Court finds no evidence to suggest that the petitioner's actions in the proceedings were dilatory or could have substantially contributed to a process of this nature taking this long to be resolved; therefore the delay in the proceedings cannot be attributed to the plaintiff's alleged lack of initiative.

C.4. Conduct of the authorities

Arguments of the parties and of the Inter-American Commission

176. The Commission claimed that "the conduct by the State authorities in the domestic proceedings […] was not diligent" and that the State "not only failed in its duty to move the proceedings forward," but also "incurred in delaying actions" as the defendant party. It added that the State did not take into account either that the proceedings "involved a child with a disability, or later, an adult with a disability." Finally, the Commission emphasized that this case does not involve "a civil suit between private parties" and that "suits in which one of the parties is the State can have particular characteristics."

177. The representatives pointed out that the behavior displayed by the judge in the case "caused excessive delays in the proceedings" and he failed to comply "with the obligations demanded by the vulnerable condition of Sebastián Furlan." They added that the General Staff of the Army "adopted a dilatory attitude by filing an objection based on the statute of limitations which was clearly inadmissible," and "failed to adequately convey the request that would have allowed for a settlement." In addition, they claimed alleged negligence by the Property Registry, the Cadastre Office and the City of Buenos Aires Health Secretariat.

178. The State argued that because the case was processed "in the Federal Civil and Commercial courts," based on the "principle of initiative" it cannot be argued that the judge in charge of the proceedings "had the obligation to promote a case against this instance, which is not recognized in respect of its activity as a legal entity of a public nature."

Considerations of the Court

179. The Court notes that the arguments of the parties with regard to this matter focus on: i) the actions of the judicial authorities in this process, and ii) the actions of the State authorities as the defendant party.

C.4.1) Conduct of the judicial authorities in the process

180. Articles 34 and 36 of the CPCCN establish the judge's procedural authority. In accordance with this law, the judge has the duty to direct the proceedings, ensuring the equality of the parties in the proceedings, monitoring that the processing of the case is consistent with the principle of judicial economy,[314] and preventing the paralysis of the

[314] Article 34 section 5 of the CPCCN establishes that the judge has the duty to: "[d]irect the proceedings, and shall, within the limits expressly established in this Code: a) [c]oncentrate, to the extent possible, within a single action or hearing all steps necessary; b) [i]ndicate, before processing any petition, the defects or omissions thereof, ordering their correction within an established term, and order ex officio all steps necessary to prevent annulments; c) [m]aintain equality between the parties to the proceedings; d) [p]revent and punish all acts contrary to the duty of loyalty, honesty and good faith; e) [e]nsure that in the processing of the case the greatest judicial economy is sought." *Cf.* Article 34 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

process.[315] Specifically, Article 34, clause 2 of the CPCCN establishes that judges have the duty "to decide cases according to the order in which they reach that stage, except for urgent matters which should have said preference by law." [316] Regarding the latter, the Court notes that Article 36 of the Rules of the National Judiciary establishes that "compensation for physical disability shall addressed in a preferential manner."[317]

181. The Court confirms the existence of standards that establish the procedural terms for notification of the suit,[318] for production of the evidence,[319] for the expert witness reports,[320] and to lodge an appeal.[321] Consequently, these types of proceedings have

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[315] Article 36 of the CPCCN regulates the "Regulatory and Procedural authority" of the judge, establishing that, even without a request from a party, the judges and courts can: 1) Take measures conducive to preventing the stalling of the proceedings. To this end, once a term has expired, whether the relevant authority was exercised or not, it shall pass to the next step of the proceedings, establishing on its own motion the necessary measures; 2) Order the steps necessary to clarify the truth of the facts in dispute, respecting the rights of the parties to defend themselves; 3) Correct any material error or remedy any omission of the Judgment regarding the claims in dispute, if and when the amendment or addendum does not substantially alter the decision, and was not agreed to by both parties; 4) Order, at any time, the appearance of the parties to attempt a conciliation or request any explanations deemed necessary regarding the matter of the dispute. The mere proposal of conciliation solutions will not entail a prejudgment; 5) Determine at any time the appearance of expert witnesses and witnesses to question them about any points deemed necessary; 6) Based on the formalities contemplated in this Code, require the submission of additional documents held by the parties or by third parties, under the terms of Article 385 and 387. *Cf.* Article 36 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

[316] *Cf.* Article 34 clause 2 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

[317] Article 36 of the Rules for the National Justice System establishes that: "Cases shall be resolved in the order that they are submitted for judgment. However, the following cases shall be processed in a preferential manner: habeas corpus remedies; cases concerning the right to freedom of assembly; military service; those of a criminal nature; alimony judgments, compensations for disability, collection of salaries, wages and fees, retirements and pensions; matters regarding jurisdiction and precautionary measures; tax foreclosures and injunctions, possessory actions and incidents. As an exception, it may order the preferential resolution of a case not included among the above, if there is a meritorious reason for urgency. *Cf*. Regulations for the National Justice, agreed 17/12/1952, Article 36. Statement by expert witness Gullco, file on Merits, volume II, page 824.

[318] Article 338 of the CPCCN establishes that "Having presented the application according to the established provisions, the judge shall give notice to the defendant to appear and provide his answer within fifteen days. When the defendant party is the State, a province or municipality, the term to appear and respond to the petition shall be sixty days." *Cf.* Article 338 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

[319] Article 367 of the CPCCN establishes that "the term for the production of evidence shall be set by the judge and shall not exceed forty days. Said term is common and shall begin from the date of the hearing contemplated in Article 360 of this Code." Article 482 of the CPCCN states that "Having produced the evidence, the Assistant Administrative Secretary, without the need for any action by the interested parties […] shall order it to be added to the file. Once this procedure is completed, the Assistant Administrative Secretary shall place the records with the Court Registry; this decision shall be notified by certified writ and once it is final, the file shall be delivered to the legal counsel in order and for a term of six days each, without need for a written petition and under their responsibility so that they may present, if deemed appropriate the brief arguing the merits of the evidence. Those who act under common representation shall be considered as a single party. Once the term has elapsed without the file having been returned, the party that retains it shall lose the right to plead without requiring a service of writ. The term for submitting the argument is common" Cf*.* Articles 367 and 482 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

[320] Article 460 of the CPCCN establishes that "Having responded to the lawsuit according to the previous Article, or if the term for doing so has expired, at the hearing contemplated in Article 360, the judge shall appoint the expert witness and shall determine the points of the expert report, being able to add others or eliminate any considered inadmissible or superfluous, and shall determine the period within which the expert witness shall complete his task. If no term is specified in the order, it shall be understood as being fifteen days." *Cf.* Article 460 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

different procedural terms, as provided in Article 34.c) of the Civil and Commercial Procedural Code, whereby the judges shall: "Issue final and firm judgments in ordinary proceedings, unless otherwise indicated, within forty (40) or (60) days, for a single judge or *court en banc*, respectively." [322]

182. First, with regard to the time elapsed between the filing of the petition and serving notice of the suit, the Court reiterates its previous comment regarding the impossibility of attributing said delay to the petitioner (*supra* para. 168) On this point, the Court notes that, according to Article 338 of the CCPN, the judge should serve notice of suit as contemplated in the law and, in any case, if he considers that the petitioner has not correctly identified the defendant, the judge should try prevent the complete paralysis of the proceedings for 3 years, 11 months and 24 days, through the use of its procedural authority.[323] The Court considers that at this procedural stage, as the file shows, the judge displayed a passive attitude.

183. Second, the Court notes that, according to Article 367 of the CPCCN, the "term for the production of evidence shall be established by the judge and shall not exceed forty days." In the instant case the period for presenting evidence lasted from October 24, 1997 (*supra* para. 91) until March 2, 2000 (*supra* para. 98), in other words, 2 years, 3 months and 6 days. Furthermore, Article 460 CPCCN establishes that the judge shall appoint expert witnesses and "shall indicate the term within which [they] shall complete their task [and if] the order does not specify the term, it shall be understood to be fifteen days." In the instant case, the judge appointed two expert witnesses on February 17, 1998, granting them a term of 20 days to submit their expert opinions,[324] and they assumed the position on March 2, 1998 (*supra* para. 92). Notwithstanding the term established, the psychologist and medical experts submitted their reports on March 5, 1999 (*supra* para. 96) and November 15, 1999 (*supra* para. 96), respectively, in other words, more than one year after the established deadline.

184. Third, The Court finds that, under the provisions of Article 482 of the CPCCN, once the evidence has been produced, "the Assistant Administrative Secretary, without the need for any action by the interested parties […] shall order its addition to the file."[325] However, the petitioner was the one who had to request the certification of the evidence and closing of the period for reception of evidence (*supra* para. 96), in order to move forward to the next stage of the proceedings.

185. Fourth, the Court notes that, according to Article 244 of the CPCCN, "…[i]f there are no provisions to the contrary, the term to file an appeal shall be five days," and that "all regulations regarding fees shall be subject to appeal," and "the motion for appeal shall be

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321 Article 244 CPCCN establishes that "…[u]nless stated otherwise or if there are no provisions to the contrary, the term to file an appeal shall be five days. All regulations regarding fees shall be subject to appeal, and the motion for appeal must be filed within five days of notification". *Cf.* Article 244 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

322 Article 34.3.c of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

323 *Cf.* Article 36.1 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

324 *Cf.* Brief of the Federal Judge of First Instance of February 17, 1998, page 237.

325 *Cf.* Article 482 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

filed within five days from notification."[326] In the instant case, on November 18, 1996 the State appealed the judicial decision that rejected the preliminary objection based on the statute of limitations and set the fees. After several steps taken for the EMGE to provide justification for its appeal, on March 24, 1997 the EMGE indicated that it was appealing the fees because they were too high. The Court notes that, despite exceeding - by approximately 4 months - the term legally established for that purpose, on March 26, 1997 the judge granted the appeal (*supra* para. 87).

186. Therefore, from the arguments presented by the State there are no specific reasons to justify why a civil suit that should not have lasted more than two years (*supra* para. 174) ended up lasting over twelve years. As previously mentioned, the actions of the petitioner are not the direct cause of this delay, and thus it is clear that there was a lack of diligence on the part of the judicial authorities who were in charge of the judicial proceedings in relation to the terms and conditions established for civil proceedings. In light of the above, the Court concludes that the judicial authority did not act in a manner conducive to ensuring compliance with the procedural terms, did not fulfill the duty to "[t]ake measures conducive to preventing the stalling of the proceedings,"[327] and, even though the matter involved compensation for the disability of a minor, [the judge] did not use his procedural authority, did not grant preferential processing,[328] did not request the participation of the Juvenile Public Defender, and in general did not act with the special diligence required to resolve this matter under consideration.

C.4.2) Actions of other State authorities as the defendant party or other State authorities involved

187. The Court emphasizes that in this case the defendant was the State, more specifically the EMGE, and therefore it deems it necessary to analyze the actions of the state authorities that acted as counterpart, in order to establish whether the delays in the instant case were attributable to them. Specifically, the Court notes that the following procedural steps were taken by the defendant: i) on February 27, 1996 the notice of the suit was served and on September 3, 1996 the EMGE provided the response to the petition (*supra* para. 85), in other words, more than four months after the legal deadline; ii) the EMGE did not attend the settlement hearing convened in the process, arguing that the institution did not have the authority to reach a settlement (supra para. 88).

188. The Court further notes that other state institutions were involved in the process. Among them, it is worth examining the actions of the Property Registry and the Cadastre Office. These agencies took several steps to determine ownership of the property where the accident occurred (*supra* para. 83). In light of these facts, the Court finds that these steps were not efficient; in addition to taking more than three years, information was only provided on the owner of plot 2, and in the end the petitioner had to withdraw the official letters requesting information "in light of the negative outcome" (*supra* para. 83 and 84). As mentioned previously, this period contributed significantly to the delay in the process, and the judge did not take steps in his position as director of the proceedings to prevent the delays in these actions (*supra* para. 186).

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[326] *Cf.* Article 224 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

[327] *Cf.* Article 36, clause 1 of the CPCCN, Law 17.454/1967, text ordered by Decree 1042/1981 (file of appendices to the brief of pleadings and motions, volume VII, page 3154).

[328] *Cf.* Regulations of the National Justice System, Approved 17/12/1352, Article 36.

189. Likewise, the Court notes that the medical expert witness requested an MRI to be performed on May 18, 1998, and that, after a number of administrative procedures,[329] an appointment to carry out this test was finally obtained on January 11, 2000, in other words over 1 year and 7 months later (*supra* para. 94). The Court considers that the time taken to perform the medical test is unreasonable and reflects a lack of diligence by the authorities involved, specifically the Health Secretariat of the City of Buenos Aires. The foregoing is even more serious considering that the health of a minor with a disability was involved (*supra* para. 139), for whom even greater promptness was required, not only in the judicial proceedings under way but also to obtain the evidence that was being gathered for said proceedings and that, in addition, was requested from another State entity. Consequently, the Court finds that the actions of the State as the defendant party and those of its institutions showed significant levels of passivity, inactivity and lack of due diligence, aspects that are very problematic in a case of this nature and that caused the delay in the resolution of the judicial proceedings.[330]

190. Bearing in mind the reasons outlined above, the Court considers that the State has not demonstrated that the prolonged delay of more than 12 years is not attributable to the behavior of its authorities,[331] particularly if we take into account that it was not only the judicial authorities who had a direct involvement in these proceedings, but also that several of the delays are attributable to state agents who participated as the defendant party or who should have provided information or acted in an expedite manner in order to guarantee the celerity of the proceedings.

C.5) Adverse effect on the judicial situation of the interested party and impact on personal integrity

Arguments of the parties and of the Inter-American Commission

191. The Commission argued that "the purpose of the proceedings was to determine the State's responsibility in Sebastián's case [...] which would lead to monetary reparation deemed key to providing adequate and timely rehabilitation treatment and psychological and psychiatric assistance to Sebastián." It further stressed that "Sebastián Furlan was an adolescent when he sustained the permanent damage and, therefore, required the attention and rehabilitation befitting his stage of development" as well as "a special degree of diligence" by the State. It also argued that "Sebastián sustained a severe disability as a result of the accident, the consequences of which required timely and multidisciplinary treatment and, in light of [his] precarious economic situation […] he needed the award." The Commission added that "the effects that the unwarranted delay in the suit had on Sebastián" constituted "a separate violation of his right to personal integrity."

192. The representatives held that the "beginning and results of the lawsuit […] had a close link with the rehabilitation needs" of Sebastián Furlan, given that "the passage of time directly affected [his] health," and that the "the longer the delay in receiving the compensation the more limited were the possibilities of obtaining comprehensive treatment

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329 *Cf.* Official communications prepared to obtain the appointment for an MRI, *supra* note 168.

330 In a similar case where the domestic judicial authorities took over two years to collect the medical evidence required by the plaintiff to prove the injuries caused by a traffic accident, the European Court considered that only exceptional circumstances could justify this type of delay. ECHR, *Case of Martins Moreira v. Portugal* (No. 11371/85) Judgment of October 7, 1998, para. 58 ("The Court finds it surprising that it took two years to carry out three medical examinations, the longest of which required only fifteen days. Only very exceptional circumstances could justify such a delay.")

331 *Cf. Case of González Medina and relatives v. Dominican Republic*, para. 260.

other special care required by his situation." They added that the judicial system failed to take into account Sebastián Furlan's "situation of vulnerability and evident need for protection", that he was " [not only] a minor, but also suffered from a disability," and the conditions of "poverty and marginalization" that his family lived in. They also alleged the violation of the "right to information, health, social security, personal integrity and a dignified life to the detriment of Sebastián Furlan", due to numerous omissions related to the rehabilitation and "in the intervention of mental health and social services." They pointed out that the "omissions of the State as guarantor" of those rights had a specific impact on Sebastián Furlan's recovery due to the fact that "he did not receive appropriate and timely medical care that would have allowed him to cope with the health problems caused by the accident in the best possible conditions."

193. The State did not present specific arguments regarding the adverse effects caused to the party concerned. However, it pointed out that it was denied "any possibility of presenting arguments in its own defense" regarding the alleged violation "of the right to personal integrity […] in relation to the progressive development of economic, social and cultural rights". The State indicated that "from the time of the accident suffered by Sebastián in December 1988, it had provided medical and psychological assistance on several occasions." It added that "the public health service was always available to Sebastián Furlan […]. However, his family chose to seek private medical care, in a personal decision that was absolutely to be respected, but not at all attributable to the Argentine State." Likewise, the State pointed out that free medical treatment was offered to Sebastián Furlan and his family "for purely humanitarian reasons". According to the State, Danilo Furlan "contacted [the Directorate of Human Rights of the Ministry of Foreign Relations] to express his gratitude." It argued that "he attended […]only once the interviews programmed with his son Sebastián and on that occasion he expressed his wish to discontinue treatment he had requested, given the resistance of his own family".

Considerations of the Court

194. The Court reiterates that, in the analysis of the reasonableness of the time, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account[332], bearing in mind, among other elements, the matter in dispute[333]. In this regard, this Court has established that if the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible[334].

195. For its part, the European Court of Human Rights has, on several occasions, used this criterion in the analysis of a reasonable time. Indeed, in the case of *H. v. United Kingdom*, the Court placed special emphasis on the importance of "what was at stake" for the applicant and determined that the result of the proceeding in question had a particular quality of irreversibility. Therefore, in cases of this kind, the authorities are under a duty to exercise exceptional diligence[335]. Moreover, in the case of *X. v. France,* the Court indicated

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[332] *Cf.* Case of *Valle Jaramillo et al V. Colombia*, para. 155.

[333] *Cf. Case* of *Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of August 24, 2010. Series C N° 214; para. 136.

[334] *Cf.* Case of *Valle Jaramillo et al V. Colombia*, para. 155, and *Case of the Xákmok Kásek Indigenous Community V. Paraguay*. para 136.

[335] *Cf.* ECHR. *Case of H. v. United Kingdom,* (No. 9580/81), Judgment of 8 July 1987, para. 85. *(*"In the present case, the Court considers it right to place special emphasis on the importance of what was at stake for the

that the judicial authorities were under a duty to exercise exceptional diligence in a proceeding involving a person infected with the AIDS virus, having regard to the incurable nature of the disease from which he was suffering and his reduced life expectancy[336]. Likewise, in the cases of *Codarcea v. Romania and Jablonska v. Poland,* the European Court considered that, in view of the applicant's old age, the courts should display particular diligence in processing the case.[337]

196. The Court further recalls that the Convention on the Rights of Persons with Disabilities, mentioned previously (*supra* para. 137), contains rules on the importance of effective access to justice for persons with disabilities "on an equal basis with others, including through the provision of procedural and age-appropriate accommodations" (Preamble and Art. 13.1). Thus, the Court considers that when vulnerable persons are involved, as in the case of a person with disabilities, it is imperative to take the pertinent actions, such as ordering the authorities to give priority to addressing and settling such cases, in order to avoid delays in their processing so as to ensure a prompt decision and execution thereof.

197. In the instant case, the Court finds that the evidence on file confirms Sebastián Furlan's serious health and mental condition caused by the accident and his subsequent need for medical and psychological care (*supra* paras. 73, 74, 76, 77, 95, 96 and 111). Moreover, it is proven that Sebastián Furlan and his family did not have sufficient financial resources to provide him with the medical and psychiatric treatment recommended throughout those years (*supra* para. 71). In this regard, based on the treatment ordered by the doctors who examined him during the judicial proceeding, expert witness Dr. Estela del Carmen Rodriguez pointed out that although Sebastián Furlan reached legal age during the course of the civil suit "if the recommended treatment and neuro-cognitive therapy had been provided in time, [it is] likely that his functions and life quality would be better now."[338] She added that Sebastián Furlan "did not receive the necessary treatment with the

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applicant in the proceedings in question. Not only were they decisive for her future relations with her own child, but they had a particular quality of irreversibility […] In cases of this kind the authorities are under a duty to exercise exceptional diligence").

336 *Cf.* ECHR, *Case of X. v. France,* (No. 18020/91), Judgment of 31 March 1992, para. 47 ("This Court takes the view that what was at stake in the contested proceedings was of crucial importance for the applicant, having regard to the incurable disease from which he was suffering and his reduced life expectancy" […] In short, exceptional diligence was called for in this instance, notwithstanding the number of cases which were pending, in particular as it was a controversy the facts of which the Government had been familiar with for some months and the seriousness of which must have been obvious to them."). Similarly, ECHR, *Case of A and others v. Denmark* (No. 20826/92), Judgment of 22 January 1996, para. 78 ("The Court shares the Commission's opinion that what was at stake in the proceedings was of crucial importance for Mr. A, Mr. Eg, Mr. C, Mr. D, Mr. E, Mr. F and the son of Mr. and Mrs. G in view of the incurable disease from which they were suffering and their reduced life expectancy, as was sadly illustrated by the fact that Mr. C, Mr. F and the son of Mr. and Mrs. G died of AIDS before the case was set down for trial. Accordingly, insofar as concerns the first eight applicants, the competent administrative and judicial authorities were under a positive obligation under Article 6 para. 1 […] to act with the exceptional diligence required by the Court's case-law in disputes of this nature").

337 *Cf.* ECHR*. Case of Jablonská v. Poland,* (No.60225/00), Judgment of 9 March 2004, Final, June 9, 2004, para. 43 ("Having regard to all the relevant circumstances and, more particularly, to the fact that in view of the applicant's old age – she was already 71 years old when the litigation started – the Polish courts should have displayed particular diligence in handling her case"), and *Case of Codarcea v. Romania*, (No. 31675/04), Judgment of June 2, 2009, Final, September 2, 2009, para. 89. Also, *Case of Styranowski v. Poland,* (No. 28616/95), Judgment of 30 October 1998), para. 57 ("Therefore, in view of his age, the proceedings were of undeniable importance for him. Accordingly, what was at stake for the applicant called for an expeditious decision on his claim.), and *Case of Krzak v. Poland,* (No. 51515/99) Judgment of 6 April 6, 2004, Final, July 7, 2004, para. 42.

338 Affidavit rendered by Doctor Estela del Carmen Rodríguez on February 10, 2012 (file on Merits, volume II, page 763).

frequency and continuity required [which] would have allowed him to become an adult with better chances of being able to manage on his own"[339]. As to the immediacy of the treatment that Sebastián Furlan should have received, the expert witness pointed out that "at that age, the prefrontal cortex responsible for executive functions is in a phase of rapid growth. Because of this, it is not surprising that he had and still has executive dysfunction." [340]Therefore, the expert witness concluded that Sebastián Furlan "had sustained a severe brain injury, resulting in a fracture of the right temporal bone, for which he should have been treated in an intensive care unit." [341]

198. Finally, the expert witness Rodríguez stated:

> In this case, during the years after the [cranial encephalic trauma], when the boy was in school, steps should have been taken to address the behavioral, social, cognitive aspects (which were surely compromised), and also to be near the family to guide them and detect the potential dysfunctions which often occur. All this required an interdisciplinary team. Psychopathological treatment was indicated but this was not sufficient; if the hospital could not provide this approach, and at that time there was no institution within the public health system that could, he should have been referred to a private institution.[342]

199. Furthermore, the Court notes that in the context of the civil proceeding the two suicide attempts by Sebastián Furlan were reported (*supra* para. 89). Thus, the Court considers that this information was brought to the attention of the judge, evidencing the problems experienced by Sebastián Furlan in the early stages of rehabilitation and his need for specialized medical care given his vulnerable situation, which required greater promptness for the completion of the process.

200. Another situation that showed that Sebastián Furlan's situation was urgent was the incident that triggered his preventive detention on February 21, 1994, so that he could undergo psychiatric examination the following day in order to "determine whether he was in a fit condition to render a preliminary examination statement or whether he was a danger to himself and to others" (*supra* para. 107). On said occasion, the Trial Court ordered the hospitalization of Sebastián Furlan in a specialized center in order to guarantee his safety and psychiatric treatment, taking into account the medical reports presented by professional psychiatrists that confirmed his serious health condition (*supra* para. 108). During his hospitalization at Evita Hospital, the trial court constantly assessed his mental health condition based on an analysis of the medical reports submitted by the staff at the Hospital and at other state medical institutions, who took into account the grave mental disorders and the difficult family situation of Sebastián Furlán. The Court emphasizes that the aforementioned facts were included in the case file of the civil proceeding as elements that proved the grave situation that Sebastián Furlan was facing (*supra* para. 89). However, these facts were not taken into consideration the judge hearing the case for the purpose speeding up the proceedings.

201. Based on the foregoing, the Court considers it relevant to recall that the civil suit for damages involved a minor, and later on an adult, with disabilities, which implied an even greater obligation to respect and guarantee his rights. Particularly, with respect to the courts that heard said suit, it was essential for them to take into consideration the special

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339 Affidavit rendered by Doctor Estela del Carmen Rodríguez, page 763.

340 Affidavit rendered by Doctor Estela del Carmen Rodríguez, page 765.

341 Affidavit rendered by Doctor Estela del Carmen Rodríguez, page 765.

342 Affidavit rendered by Doctor Estela del Carmen Rodríguez, page 765.

characteristics related to the alleged victim's vulnerable condition, because, apart from being a minor and an adult with disabilities, he also had few financial resources to obtain adequate rehabilitation. In this regard, the Court recalls that "the link between the disability, on the one hand, and poverty and social exclusion, on the other, is direct and significant."[343]

202. Therefore, if the judicial authorities had taken into account Sebastián Furlán's vulnerable condition, due to the special circumstances described above, it would have been clear that this case called for a higher degree of diligence on the part of the judicial authorities, since the main objective of the suit - which was to obtain compensation to cover the debts that Sebastian's family had accumulated over the years to provide him with rehabilitation and the necessary therapies so as to lessen the negative effects of the page of time- depended on the promptness of the proceeding. Likewise, the Court notes that despite the agreement between the two medical expert reports regarding the need for urgent treatment for Sebastián Furlan, the judge in the case failed to adopt timely measures to ensure proper access to rehabilitation.

203. Bearing in mind the foregoing, the Court considers that it is sufficiently proven that the delay in the proceeding in this case had a significant and real impact on the juridical situation of the alleged victim and the effect is, until today, irreversible, given that, e by delaying the compensation he needed, he was unable to receive the treatment that could have provided him with a better quality of life.

C.6) Conclusion regarding reasonable time

204. Having analyzed the four elements of the test of a reasonable time (*supra* para. 152), the Inter-American Court concludes that the judicial authorities hearing the civil suit for damages and the claim for compensation did not act with the due diligence or promptness required by the vulnerable situation of Sebastián Furlan, and therefore exceeded the reasonable time, in violation of the right to a fair trial established in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, to the detriment of Sebastián Claus Furlan.

205. The Court notes that the Commission and the representatives alleged that the right to a trial within a reasonable time was also violated to the detriment of his father, Mr. Danilo Furlan and his mother, Mrs. Susana Fernández. In this regard, the Court considers that the holder of the rights violated in this case was Sebastián Furlán and that his parents acted on his behalf, not on their own behalf. Without detriment to the foregoing, the actions and the participation of Mr. Danilo Furlan and Mrs. Susana Fernández during the suit for damages shall be analyzed in detail in the chapter related to the right to personal integrity and a fair trial of the relatives of Sebastián Furlán (*infra* paras. 245 to 266).

D) Judicial protection and right to property

Arguments of the parties and of the Inter-American Commission

206. The Commission considered that "the execution of judgments is an intrinsic part of the right to access to a judicial remedy." It explained that "the right to property is not part of the litis under examination in the instant case [, and therefore it] shall not analyze […] the decision to execute the sentence in the form of bonds[….] it will analyze, however, whether the State […] was in compliance with the obligations […] regarding effective

[343] *Cf. Case of Ximenes Lopes v. Brazil*, para. 104.

enforcement of judgments." It argued that "[it] cannot deem the execution of the judgment to be effective, given that it significantly reduced the original amount of the reparation given." It pointed out that it was necessary to take into account the petitioner's "precarious economic situation, the urgency to provide care, assistance and treatment to [Sebastián Furlán] and the need to defray court costs and legal fees, [for which reason] it was not an option for him to wait until January 2016 to redeem the bonds at their nominal value". The Commission added that the inadequacy of the amount awarded was not based on the form of bonds, but rather on the "significant decrease in their value at the time of payment," for which the Commission argued that "if a State adopts a policy to execute the sentence in the form of bonds, it should do so guaranteeing that the amount already paid has the value ordered at the time of payment."

207. The representatives agreed with the Commission and further alleged that "[t]he system of payment of the judicial compensation awarded to Sebastián Furlán is in conflict with the effectiveness of the judgment and infringes the right to property". They indicated that "[t]he form of payment established by Law 23.982 in no way implied full and immediate payment of the compensation[, which] in cases like Sebastián Furlán's, in which the money was required to cover expenses incurred due to the person's health condition, clearly leads to the detriment of any possibility of rehabilitation and treatment". They argued that "[i]t is inadmissible that a State, responsible for a wrongful act to the detriment of a child that also resulted in a situation of disability, should claim the country's alleged economic emergency in order to delay compliance with its obligation, which is essential for the proper and timely treatment and care of the victim." They alleged that "the State failed to comply with a compensation payment awarded by a final judicial decision" and that it breached "the beneficiary's acquired right to reparation", given that this implied a direct impairment of the victim's property. They further alleged that "the violation of the right to property stems from the disregard of the decision issued by a judicial body, a decision that guaranteed compensation with a clear reparatory purpose." In addition, they alleged that "the right to health of a person with disabilities cannot be deferred based on an alleged economic benefit for the community," even less so, when Consolidation Law 23.982 [*Ley de Consolidation N° 23.*982] was approved in 1991, when the financial compensation was awarded by the court and, therefore, was incorporated into the victim's property in the year 2000.

208. The State indicated that i) "the arguments of the [...] Commission and the representatives […] were erratic and inconsistent, [since] they sought to avoid discussion of the aspects related to the amount of the compensation and then express grievances regarding the differences between the amount ordered in the Judgment and the amount that Mr. Furlán actually received"; ii) "during the enforcement of the Judgment, the Argentine State faced one of the most serious and profound economic and social crises in its history, which resulted, among other things, in the devaluation of the currency, preceded by the repeal of Law 23.982 on Convertibility [*Ley de Convertibilidad*] which established the parity between the peso and the dollar" and iii) "the rule established, as the representatives had indicated, two options for the collection of the compensation awarded by the court: the deferred payment in cash or payment in Consolidated Bonds which could be redeemed for their full value in 16 years"; iv) it was Mr. Furlan's own decision "to opt for the mechanism of Consolidated Bonds" and to "cash in the bonds prior to their maturity date […] established by law and below their nominal value" and v) the 30% of the fees paid to the lawyer is the result of a *pactum de cuota litis* freely and voluntarily agreed with his legal counsel," and therefore the fact that the payment of such fees affected the final amount received by Mr. Furlan "is the direct consequence of said agreement, for which the State cannot be held responsible in any way."

Considerations of the Court

209. The Court has indicated that, under the terms of Article 25 of the Convention, it is possible to identify two specific responsibilities of the State. The first is that States have the obligation to incorporate in their legislation and ensure due application of effective remedies before the competent authorities, which protect all persons subject to their jurisdiction from acts that violate their fundamental rights or which lead to the determination of the latter's rights and obligations. The second is that States must provide effective mechanisms to ensure that the decisions or judgments delivered by such competent authorities are executed[344], so that the declared or recognized rights are protected effectively. The process should lead to the materialization of the protection of the right recognized in the judicial ruling, through proper enforcement of this ruling[345]. Therefore, "the full effectiveness of judgments depends on their implementation," since a judgment which has enforceable authority gives rise to certainty as to the right or dispute under discussion in the particular case, and therefore its binding force is one of the effects thereof. The contrary would imply the denial of this right.[346]

210. In this respect, the Court reiterates that the execution of judgments should be governed by those specific standards that allow for the application of the principles of, *inter alia*, judicial protection, due process, legal certainty, judicial independence and the rule of law. The Court concurs with the European Court of Human Rights that in order to achieve the full effectiveness of a judgment, its implementation should be complete, perfect, and comprehensive[347] and without delay.[348]

211. Moreover, under Article 25.2.c) of the American Convention, the principle of effective judicial protection requires that the implementation procedures be accessible to the parties, without hindrance or undue delay in order to quickly, simply, and comprehensively satisfy

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344 *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 65 and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 142.

345 *Cf. Case of Baena Ricardo et al v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of Abrill Alosilla et al. v. Peru*. *Merits, Reparations and Costs*. Judgment of March 4, 2011. Series C No. 223, para. 75.

346 *Cf. Case of Mejía Idrovo v. Ecuador*, para. 104, *Case of Baena Ricardo et al v. Panama. Jurisdiction*, para. 82, and *Case of Acevedo Buendía et. al ("Discharged and Retired Employees of the Comptroller") v. Peru*, para. 72.

347 *Cf. Case of Mejía Idrovo v. Ecuador*, para. 105, citing ECHR *Case of Matheus v. France*, (No. 62740/01*),* Judgment of March 31, 2005, para. 58. According to the principles proposed by the Consultative Council of European Judges (CCJE), a Consultative Body of the Committee of Ministers of the Council of Europe on matters concerning the independence, impartiality and professional capacity of judges, "enforcement of judicial decisions should be fair, swift, effective and proportionate" (*Cf.* Opinion no. 13 (2010) *On the role of judges in the enforcement of judicial decisions*. Available at: https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE(2010)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

348 *Cf. Case of Mejía Idrovo v. Ecuador*, para. 105, citing ECHR*, Case of Cocchiarella v. Italy* (No. 64886/01), G.C., Judgment of March 29, 2006, para. 89, and Case of *Gaglione et al. v. Italy*, (No. 45867/07), Judgment of December 21, 2010, para. 34. In light of the ECHR's established case law, a delay in the execution of judicial decisions may constitute a violation of the right to be heard within a reasonable time, as established by Article 6, para. 1 of the European Convention on Human Rights since the "[e]xecution of a judgment given by any court must therefore be regarded as an integral part of the trial for the purposes of Article 6". See also, ECHR, *Case of Hornsby v. Greece*, (No. 18357/91), Judgment of March 19, 1997, para. 40, and *Case of Jasiūnienė v. Lithuania*, (No. 41510/98), Judgment of March 6, 2003. Final, June 6, 2003, para. 27.

their purpose[349]. Additionally, the provisions governing the independence of the judicial order must be made in an appropriate way so as to ensure the timely execution of the judgments without any interference by other branches of Government[350] and guarantee the binding and obligatory nature of the decisions of last resort.[351] The Court considers that in a system based on the principle of rule of law, all public authorities, within the framework of their jurisdiction, must take heed of judicial decisions and promote their execution without hindering the purpose and scope of the decision or unduly delaying its implementation.[352]

212. The Court considers that in the instant case, it has been proven that, after an unjustified delay in the civil suit for damages (*supra* para. 205), Sebastián Furlán had to begin a second administrative proceeding in order to obtain payment of the compensation awarded in the judgment. Notwithstanding the fact that the length of said enforcement process has already been analyzed in the preceding chapter (*supra* para. 147 to 152), the Court will examine the following arguments: i) whether the judgment was implemented in its entirety; ii) whether the application of Law 25.344 on economic- financial emergency was justified in the instant case, and iii) whether the foregoing had an impact on the right to property.

213. In the first place, the Court notes that the compensation awarded in favor of Sebastián Furlán was framed within Law 23.982 of 1991 (*supra* para. 103), for which he had to decide between two forms of payment: i) deferred payment in cash, or ii) payment in consolidated Bonds which could be redeemed in 16 years. Either of these two options meant that Sebastián Furlán was not able to immediately receive the sum of 130,000 Argentine pesos as compensation in his favor, but instead had to choose between the payment of a sum of money in installments or payment in bonds, for which he could only obtain their nominal value after 16 years. In this respect, it has been proven that due to his difficult financial circumstances (*supra* para. 104, 117) and the need to rapidly collect the money in order to pay for medical care (*supra* para. 71)[353], Sebastián Furlan opted for the payment in consolidated bonds in national currency to be redeemed in 2016 (*supra* para. 104). This Court further notes that after the bonds were paid to the beneficiary, Mr. Danilo Furlan cashed them in at 33% of their nominal value. After paying the amount that he was required to pay in court costs and legal fees based on the 30-70% responsibility assigned in the judgment and subtracting 30 percent that corresponded to the lawyer, Sebastián Furlan finally received 116,063 pesos awarded in bonds, equivalent to approximately $38.000 Argentine pesos, of the 130,000 Argentine pesos ordered in the judgment.

214. Bearing these facts in mind, the Court considers that the judgment that awarded the compensation was not fully implemented, given that Sebastián Furlan should have received 130,000 Argentine pesos whereas he actually received approximately $38,000 Argentine

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349 *Cf. Case of Mejía Idrovo v. Ecuador*, para. 106. *Cf.* Advisory Opinion No.13 (2010) *On the role of judges in the enforcement of judicial decisions*, Conclusions, H).

350 *Cf. Case of Mejía Idrovo v. Ecuador*, para. 106. *Cf.* Advisory Opinion No. 13 (2010) *On the role of judges in the enforcement of judicial decisions*, Conclusions, F), See also ECHR, *Case of Matheus v. France*, paras. 58 and subsq.

351 *Cf. Case of Mejía Idrovo v. Ecuador*, para. 106. This means that compliance is mandatory, and that if they are not obeyed voluntarily, may be enforced coercively.

352 *Cf. Case of Mejía Idrovo v. Ecuador*, para. 106. The European Court has established in the case of *Inmobiliare Saffi v. Italy* that: "While it may be accepted that Contracting States may [...] intervene in proceedings for the enforcement of a judicial decision, the consequence of such intervention should not be that execution is prevented, invalidated or unduly delayed or, still less, that the substance of the decision is undermined". *Cf.* ECHR*, Case of Inmobiliare Saffi v. Italy,* para. 74.

353 Testimony of Claudio Furlan, rendered at the public hearing on February 27, 2012.

pesos, an amount significantly lower than the original sum awarded for reparation. Although the State argues that the decision to cash in the bonds was a personal one, the Court notes that due to the pressing personal and financial situation of Sebastián Furlan and his family (*supra* paras. 71, 104 and 214), it was not an option for them to wait until 2016 to redeem the bonds at their nominal value. The Court further notes that neither the Commission nor the representatives had submitted objections to the original amount awarded in the judgment, but rather to the fact that by cashing in the bonds, that amount was reduced by almost one-third.

215. In the second place, without entering into a general analysis of Law 23.982 of 1991, it is necessary to assess the impact that the application of said Law had on this specific case. The first effect is that Sebastián Furlan did not receive the full and complete indemnity, which implied an impairment to the real possibility of providing him with medical treatment and other needs required by a disabled person (*supra* para. 203). To this end, the Court considers that when it comes to the application of Law 23.983 of 1991, the administrative authorities should have considered that Sebastián Furlán was a person with disabilities and few financial resources, which placed him in a vulnerable situation and which entailed a greater degree of diligence on the part of the judicial authorities.

216. In this regard, the Committee on Economic, Social and Cultural rights has indicated that "the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints."[354] Moreover, it stressed the particular importance of providing adequate income support to persons with disabilities who, owing to disability or disability-related factors, have been denied employment opportunities, which "should reflect the special needs for assistance and other expenses often associated with disability. In addition, as far as possible, the support provided should also cover individuals […] who undertake the care of a person with disabilities […], including members of the families of persons with disabilities, who are often in urgent need of financial support because of their assistance role."[355] Moreover, the Committee of the Convention on the Rights of Persons with Disabilities, in its first case[356], indicated that the particular circumstances of the individuals to whom a law is applied must be taken into consideration, given that States must not apply a law in a neutral manner "without objective and reasonable justification," and therefore States must "treat differently those persons whose situations are significantly different."

217. In the instant case, the administrative authorities never considered that, by applying the form of payment established in the aforementioned law, they greatly diminished the financial compensation awarded to Sebastián Furlan for adequate rehabilitation and to enjoy better living conditions, taking into account his vulnerable condition. On the contrary, the State justified the application of that rule due to the fact that "the Argentine State faced one of the most serious and profound economic and social crises in its history, which resulted, among other things, in the devaluation of the currency, preceded by the repeal of the Law […] on Convertibility [*Ley de Convertibilidad*] which established parity between the peso and the dollar". Nevertheless, the Court notes that the rule applied to the instant case dates from 1991, for which reason the Court considers that it was necessary for the authorities in charge of enforcing the judicial decision to weigh Sebastián Furlan's vulnerable situation against the need to apply the law regulating these types of payments. The administrative

354 Committee on Economic, Social and Cultural Rights. General Comment No. 5, para. 10.

355 Committee on Economic, Social and Cultural Rights. General Comment No. 5, para. 28.

356 Committee on the Convention on the Rights of Persons with Disabilities, Communication No. 3/2011, Case of H.M. v. Sweden CRPD/C/7/D/3/2011, April 19, 2012, para. 8.3.

authorities should have anticipated this type of disproportionate impact and proposed alternatives to the form of execution that was most detrimental to vulnerable persons.

218. The Supreme Court of the Argentine State has ruled in a similar manner when assessing the application of law 23.982 to specific cases that called for a special proceeding due to the vulnerable situation of the injured party. The Supreme Court indicated that "in the emergency legislation, the restriction of the normal exercise of economic rights recognized by the Constitution must be reasonable, limited in time and it must also consist of a remedy to the serious exceptional situation, without changing the substance or essence of the right recognized" for a specific person[357]. Consequently, in a case concerning a person with a disability, it mentioned that "*the mode of compliance with the judgment as derived from Law 23.982, would not only entail postponing the victim's entitlement to an economic right, but mainly the frustration of the main purpose of the compensation for injuries to their psycho-physical integrity, which is the cessation of the deterioration process by means of a timely rehabilitation."*[358]

219. Accordingly, the Court considers that in the instant case, the enforcement of the judgment, which ordered compensation in favor of Sebastián Furlán, was not effective and resulted in the lack of judicial protection of the victim; therefore it did not fulfill the purpose of protecting and compensating for the rights that were infringed and were recognized by means of the judicial decision.

220. In the third place, this Court's case law has developed a broad concept of property that includes, among other things, the use and enjoyment of property, defined as material goods that can be possessed or as intangible things,[359] as well as any right that may form part of a person's assets.[360] Furthermore, the Court has protected, through Article 21 of the Convention, the vested rights, in other words, rights that have been incorporated into a person's patrimony.[361] Finally, it is necessary to recall that the right to property is not an absolute right and, in this sense, may be subject to restrictions and limitations,[362] insofar as

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357 *Cf.* Supreme Court of Justice of Argentina, Gutierrez, Alberto v. Argentine Railways suit for damages, August 13, 1998.

358 *Cf.* Supreme Court of Justice of Argentina, Escobar, Héctor Oscar v. Fabrizio, Daniel – Municipality of Tigre and the Argentine Army, August 24, 1995. See also Supreme Court of Justice of Argentina, Gutierrez, Alberto v. Argentina Railways, suit for damages, August 13, 1998, Considering 11, which indicated "the victim's need for immediate psychiatric treatment, […] to have sufficient funds to purchase the orthopedic material required for his rehabilitation, a wheelchair, and to cover the relevant kinetic treatment."

359 *Cf. Case of Abrill Alosilla et al. v. Peru,* footnote on page 74, in which this Court stated that in international common law, it has been established that an expropriation is not limited to tangible or intangible property rights. On the contrary, intangible rights, including Contract rights, are entitled to protection as acquired rights in several arbitration rulings; *Cf.* International Centre for Settlement of Investment Disputes (ICSIIP)*, Case of Wena Hotels Ltd. v. Egypt.* No. ARB/98/4. Award of 8 December of 2000, para. 98, *and Case of Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt,* No. ARB/84/3, Review 328,375 of 1993. Also, International Court of Justice*, Case concerning certain German interests in Polish Upper Silesia. Merits.* Judgment of May 25, 1926. Series A. No. 7.

360 *Cf. Case of Ivcher Bronstein v. Peru. Reparations and Costs.* Judgment of February 6, 2001. Series C N° 74, paras. 120-122, *Case of Salvador Chiriboga v. Ecuador*, para. 55 and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*, para. 84.

361 *Cf. Case of "Five Pensioners" v. Peru,* para. 102, *Case of Salvador Chiriboga v. Ecuador*, para. 55, and *Case of Acevedo Buendía et al ("Discharged and Retired Employees of the Comptroller") v. Peru*, para. 84.

362 *Cf. Case of Ivcher Bronstein v. Peru*, para. 128, *Case of Salvador Chiriboga v. Ecuador*, paras. 60 and 61, and *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195, para. 399.

such restrictions or limitations are established by the appropriate legal channel and according to the parameters established by Article 21[363].

221. Furthermore, in another case[364] this Court declared a violation of the right to property due to patrimonial damage caused by the State's non- compliance with the judgments that were intended to protect the right to a pension. The Court indicated that, from the moment a pensioner fulfills the requirements to claim retirement benefits established by law, he or she acquires the right to property over the amount of the pension. Furthermore, the Court declared that the right to a pension acquired by a pensioner has "patrimonial effects"[365], which are protected under article 21 of the Convention.[366] In this regard, in the case of *Abrill Alosilla*, the Court considered that just as pensions which comply with all legal requirements are part of the wealth of a worker, the salary, benefits and wage increases earned by that worker are also protected by the right to property enshrined in the Convention.[367]

222. Accordingly, the Court notes that, in this case, there is a correlation between the problems of effective judicial protection and the effective enjoyment of the right to property. In fact, by applying the proportionality principle to the restriction of the right to property, the Court finds that Law 23.982 fulfilled a purpose admitted by the Convention, related to the handling of a serious economic crisis that affected several rights of individuals. The means chosen to deal with such a problem might be suitable to achieve that end and, in principle, could be accepted as necessary, taking into account that, on occasions, there may be no less detrimental alternative measures to face the crisis. However, based on the information on record, the restriction of Sebastián Furlan's right to property is not proportionate in the strict sense because it did not contemplate any other option that was less detrimental than the reduction of the compensation awarded to him. The case file contains no pecuniary or non-pecuniary measure that might have softened the impact of reducing the compensation or some other type of measure suited to the specific circumstances of a person with several disabilities who required, for his own care, the money already awarded judicially as a right to which he was entitled. In the specific circumstances of this case, the non-payment of the full amount ordered by the court in favor of a vulnerable person with limited resources called for a much greater justification of the restriction to the right to property and some type of measure to prevent such an excessive and disproportionate effect, which was not evident in this case.

223. Based on the foregoing, the Court considers that the right to judicial protection and the right to property, enshrined in Articles 25(1), 25(2.c) and 21, in relation to Article 1(1)

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363 *Cf. Case of Salvador Chiriboga v. Ecuador*, para. 54, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*, para. 84.

364 *Cf. Case of "Five Pensioners" v. Peru,* paras. 90-121.

365 *Cf. Case of "Five Pensioners" v. Peru,* para.103, and *Case of Acevedo Buendía et al ("Discharged and Retired Employees of the Comptroller") v. Peru*, para. 85.

366 In this regard, the Court found that, by arbitrarily changing the amount of the pensions that the victims had been receiving and by failing to comply with the judicial rulings arising from their applications for protective measures, the State violated the right to property embodied in Article 21 of the Convention. *Case of the "Five Pensioners" v. Peru*, paras. 115 and 121.

367 *Cf. Case of Abrill Alosilla et al. v. Peru,* footnote on page 83, where the Court noted that, in this regard, the European Court has established that: "the Convention organs have consistently held that income that has been earned does constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. ECHR, Case of *Lelas v. Croatia*, (No. 55555/08), Judgment of May 20, 2010. Final, August 20, 2010, para. 58, *Case of Bahçeyaka v. Turkey*, (No. 74463/01), Judgment of July 13, 2006. Final, October 13, 2006, para. 34, and Case of *Schettini et al. v. Italy* (No. 29529/95), Decision on Admissibility, November 9, 2000.

of the American Convention, were violated to the detriment of Sebastián Claus Furlán.

E) Other judicial guarantees

224. In this chapter, the Court will consider the arguments presented by the parties and the Inter-American Commission regarding: i) the right to be heard of Sebastián Furlan, and ii) the lack of participation of the Juvenile Defender's Office [*Asesoría de Menores*] in the civil lawsuit for damages.

E.1. Right to be heard

Arguments of the parties and of the Inter-American Commission

225. The Commission indicated that "the international *corpus juris* related to minors, as well as to persons with disabilities, is clear about the rules of special protection in judicial proceedings in which minors with disabilities are involved and [, in particular], it emphasized the guiding principles of the best interests of the child and the right to be heard".

226. For their part, the representatives alleged that during the "judicial processing of the suit for damages […] the intervening judges did not guarantee [the] right to be heard [of Sebastián Furlán], either on his own behalf or through his representatives, when he was an adolescent, as well as after he reached 21 years of age" Specifically, the representatives asserted that Sebastián Furlán "was never properly heard by the intervening judges nor by the Juvenile Defender's Office." They further alleged that "[t]he importance of the judge's personal interview with a child is even greater when there is another cause of vulnerability in the child, namely his disability."

227. The State pointed out that Sebastián Furlan "was represented by his father Danilo Furlan and assisted by a legal counsel of his choice." It added that this "implies that the young man acted in the judicial process and was heard through his representative in compliance with the provisions of the American Convention and the Convention on the Rights of the Child". Likewise, it indicated that "the briefs presented by Sebastián Furlan with legal assistance were received and provided by the judge in the case, and therefore, at no time was he denied the right to be heard."

Considerations of the Court

228. The Court reiterates that Article 8(1) of the American Convention protects the right of every person to be heard, including minors, in the determination of his or her rights. Said right must be interpreted in light of Article 12 of the Convention on the Rights of the Child,[368] which contains adequate provisions on the right of children to be heard, with the aim of ensuring that their intervention is appropriate to their situation and is not detrimental

[368] Article 12 of the Convention on the Rights of the Child states: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. (underlining added).

to their genuine interests[369]. Specifically, in General Comment N° 12 of 2009, the UN Committee on the Rights of the Child emphasized the relationship between the "best interests of the child" and the right to be heard, by asserting that "there can be no correct application of Article 3 [(Best interests of the child)] if the components of Article 12 are not respected. Likewise, Article 3 reinforces the functionality of Article 12, facilitating the Essentials role of children in all decisions affecting their lives."[370]

229. Similarly, Article 7 of the Convention on the Rights of Persons with Disabilities expressly provides that "[c]hildren with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right" (*supra* para. 136). Therefore, "it is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities."[371] Moreover, Article 13 of the Convention on the Rights of Persons with Disabilities provides that "[States parties shall] facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages."

230. Likewise, the Court reiterates that children exercise their rights progressively as they develop a greater level of personal autonomy.**[372]** Consequently, those responsible for application of the law, whether in the administrative or judiciary sphere, must take into account the specific conditions of the minor and his or her best interests to decide on the child's participation, as appropriate, in establishing his or her rights. This consideration will seek as much access as possible by the minor to examination of his or her own case.[373] The Court further recalls that the Committee on the Rights of the Child has pointed out that Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity.[374] Simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views, for which the views of the child have to be assessed on a case-by-case basis.[375]. It is worth recalling that these standards are also

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369 *Cf. Case of Atala Riffo and Daughters v. Chile*, para. 196, and Advisory Opinion OC-17/02, para. 99. Also, the United Nations Committee on the Rights of the Child has established that the right "to be heard […] in any judicial or administrative proceeding affecting the child", implies that "this provision applies to all relevant judicial proceedings affecting the child, without limitation". United Nations, Committee on the Rights of the Child, General Comment No. 12 (2009). The right of the child to be heard, CRC/C/GC/12, July 20, 2009, para. 32. In particular, UNICEF has indicated that "Any judicial ... proceedings affecting the child covers a very wide range of court hearings, including all civil proceedings such as divorce, custody, care and adoption proceedings, name-changing, judicial applications relating to place of residence, religion, education, disposal of money and so forth, judicial decision-making on nationality, immigration and refugee status, and criminal proceedings; it also covers States' involvement in international courts". UNICEF Implementation Handbook for the Convention on the Rights of the Child (fully revised third edition) 2007, p.156.

370 *Cf. Case of Atala Riffo and Daughters v. Chile*, para. 197. Committee on the Rights of the Child, General Comment N° 12, para. 74.

371 Committee on the Rights of the Child, General Comment N° 9, para. 32.

372 Committee on the Rights of the Child, General Comment N° 7, para. 17.

373 *Cf. Case of Atala Riffo and Daughters v. Chile*, para. 199, and Advisory Opinion OC-17/02, para. 102.

374 *Cf. Case of Atala Riffo and Daughters v. Chile*, para. 200 and Committee on the Rights of the Child, General Comment N° 12, para. 15.

375 *Cf. Case of Atala Riffo and Daughters v. Chile*, para. 200,and Committee on the Rights of the Child, General Comment N° 12, paras. 28 and 29.

applicable to children with disabilities.

231. In this respect, expert witness Moreno stated that: "the level of contact, immediacy, of the Court with the parties is, maybe, a bit damaged, hindered, as from the existence of a written procedure which does not allow to concentrate, obviously, all petitions and have personal contact, which in the case of children – and vulnerable groups- is essential, as provided for in article 12 of the Convention on the Rights of the Child and also the International Convention on the Rights of Persons with Disabilities, as a necessary obligation of the judge or court to make direct contact ."[376]

232. From the evidence on file, the Court notes that Sebastián Furlán was not directly heard by the judge presiding over the suit for damages. On the contrary, the evidence on file indicates that Sebastián Furlán personally appeared twice before the court, but he was not heard on those occasions (*supra* para. 88 and 90). Specifically, the Court notes that: i) On May 8, 1997, Sebastián Furlán and his attorney appeared before the settlement hearing, but there was no representative of the EMGE,[377] and therefore the hearing was cancelled and Sebastián Furlan was not heard, and ii) the court did not receive the cross-examination evidence, through which Sebastián Furlán's statement was to be received.[378] Given that Sebastián Furlan was not heard at any stage of the proceeding, the judge was not able to consider his opinions on the matter and, more especially, confirm his specific situation as a person with a disability.

233. Bearing in mind the foregoing, the Court considers that the right to be duly heard embodied in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, was violated to the detriment of Sebastián Claus Furlán.

E.2. Lack of participation of the Juvenile Defender's Office

Arguments of the parties and of the Inter-American Commission

234. The Commission argued that the State did not explain "the absence of the Juvenile Defender's Office [*Asesor de Menores e Incapaces*] [...] during the seven years of the proceeding in which Sebastián was a child and during the rest of the proceeding, once his disability was established." It indicated that "the lack of intervention of the Juvenile Defender's Office – which is binding under domestic legislation – resulted in the lack of adoption of special measures of protection for Sebastián Furlán and the control of the proceeding in order to conduct it within a reasonable time."

235. The representatives alleged that "the Juvenile Defender's Office should have intervened from the very beginning of the case, upon confirmation that the best interests of a minor were at stake, even more so in this case which involved a child with a mental disability". They pointed out that the Juvenile Defender's Office "could have taken […] several steps […], namely: specify the object of damages; require early judicial protection of the required treatments; monitor the evidence and present observations on it; appeal the lower court judgment as to the concurrent liability finally decided and the amount of

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376 Statement by expert witness Gustavo Daniel Moreno at the public hearing held on February 27, 2012.

377 *Cf.* Record of May 8, 1997 (file of appendices to the report, volume I, appendix 6, page 198).

378 *Cf.* Record of appearance at cross-examination hearing issued by Secretary 18 of the National Court for Federal Civil and Commercial Matters N° 9 on February 12, 1998 (file of appendices to the report, volume I, appendix 6, page 469).

damages awarded." Furthermore, they insisted that "the Juvenile Defender's Office was the institution vested with the necessary authority and adequate knowledge to try to question the form of payment established in the case at hand." They also indicated that "Argentine legislation imposed and still imposes the intervention of the [Juvenile Defender's Office] under penalty of nullity". They added that the defender "in his capacity as the representative of disabled persons, he could have taken the necessary steps to [obtain] without delay the [health] treatments recommended and to ensure that a disability pension was granted."

236. The State argued that "the lack of intervention of the Juvenile Defender's Office in cases like the one of young Furlan, in which his parents acted on his behalf in court, did not affect the exercise of [his] rights and guarantees". It indicated that "there is no article in the Code of Civil and Commercial Procedure [...] which stipulates that judges are under the obligation or duty to require the intervention of the Juvenile Defender's Office." To this end, it mentioned that "the entire procedural activity, including the request for the opinion and intervention of the Juvenile Defender's Office, is at the exclusive request of the interested party." It further alleged that "the intervention of the Office for the Protection of Minors [*Ministerio de Menores*] does not and cannot replace the representation that the minor's representative must necessarily have." It indicated that "upon reaching legal age, the inability to exercise legal rights […] is terminated as a matter of law […] and therefore the necessary representation of the parents and the common representation of the Office for the Protection of Minors comes to an end." In addition, it indicated that "the nullity stemming from the Juvenile Defender's lack of intervention in a proceeding like the one involving young Furlan is of a relative nature given that [...] it can be remedied by express or implied confirmation," and therefore "upon ratification of the proceedings by young Furlan once he reached legal age, the nullity is unenforceable".

Considerations of the Court

237. The Court notes that both the Commission and the representatives in this case argued that the lack of participation of the Juvenile Defender's Office would have had a direct impact on the manner in which the proceeding was conducted. In this regard, the Court notes that the legal concept of the "Juvenile Defender's Office" is embodied in Article 59 of the Argentine Civil Code, which establishes that "apart from the necessary representatives, minors are jointly represented by the Juvenile Defender's Office which shall be empowered in all types of proceedings, judicial or extrajudicial, in contentious and non-contentious proceedings, in which minors are defendants or respondents, or in proceedings concerning their property, under penalty of nullity of any act or proceeding which would be conducted without the minor's participation." Said legal concept is governed by Law 24.946, which establishes the duties and powers of "public defenders of minors and persons with disabilities."[379]

238. The Court emphasizes that, in fact, the "juvenile defender" has a wide range of powers which, among other things, allow the him or her to: [380] i) intervene and file, in

[379] Article 54 of Law 24.946 (General Law of the Office of the Attorney General). *Cf.* Article 55, Law 24.946/1998 (file of appendices to the brief of pleadings and motions, volume VII, page 3155).

[380] Article 54 of Law 24.946 (General Law of the Office of the Attorney General) states the following: Public Defenders of Minors and Persons with Disabilities shall have the following duties and powers, in all instances and spheres where their intervention is required: a) to intervene, under the terms of Article 59 of the Civil Code, in any judicial or extrajudicial proceeding affecting the person or property of minors or persons with disabilities and file, in their defense, autonomously or together with their representatives, the corresponding actions or remedies; b) to guarantee the necessary intervention of the Juvenile Public Defender's Office, in any judicial matter brought before

defense of minors or persons with disabilities, the corresponding actions or remedies, autonomously or together with their necessary representatives; ii) intervene in any case or matter and require the adoption of all measures necessary to protect the person or property of the minor, person with disability or disqualified person; iii) require the judicial authorities to adopt measures tending to improve the situation of minors, persons with disabilities or disqualified persons, and iv) request the judicial authorities to apply the pertinent measures to protect minors and persons with disabilities who are exposed to a serious and imminent risk to their physical or moral health.

239. Regarding the procedural stage at which the judicial authority in charge of conducting the proceeding involving a minor must notify the "Juvenile Defender", the expert witness Moreno stated that: "just as the Public Prosecutor's Office is notified whenever there is a doubt about jurisdiction, the judge hearing a case in which a minor is involved must immediately request the Juvenile Defender's intervention, and this is a power that is expressly stated in the Procedural Codes and that, generally within a court, is part of the judicial organization."[381]

240. In this sense, the Court notes that while Sebastián Furlan was a minor, the Juvenile Defender's Office was not notified of this fact, nor was that office notified once the degree of disability of Sebastián Furlan was known. The only such action recorded in the file is the brief dated October 24, 1996, in which the Juvenile Defender's Office stated that it was not necessary for that office to intervene since Sebastián Furlan had reached legal age (*supra* para. 86). However, the Court notes that the Juvenile Defender undertook to represent Sebastián Furlan's siblings,[382] who were minors at that time, with no further action recorded in the file by said Juvenile Defender. Moreover, the Court notes that upon reaching legal age, on October 28, 1996, Sebastián Furlan endorsed all actions that had been taken by his father on his behalf until then.[383] However, the Court also notes that this endorsement was made before the submission of the expert reports that revealed Sebastián Furlan's degree of disability (*supra* para. 86).

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the courts at all levels, whenever the best interests or property of the minor is at stake and issue the corresponding opinion; c) to intervene in any case or matter and require the adoption of all measures necessary to protect the person and property of the minor or person with disability, according to the corresponding laws when there is lack of legal representation; when it is necessary to act in their capacity or in the capacity of the legal representatives, parents or guardians, and control the actions taken by them; d) to offer advice to minors, persons with disabilities, disqualified or convicted persons under the regime of article 12 of the Penal Code, as well as to their necessary representatives, parents and other persons who may be responsible for the acts of persons with disabilities, for the adoption of all measures related to their protection e) to require the judicial authorities the adoption of measures tending to improve the situation of minors, persons with disabilities or disqualified and convicted persons subject to the regime of Article 12 of the Penal Code, whenever there is evidence of mistreatment, lack of care or improper care from their parents, guardian or persons or institutions in charge of providing them with care. If appropriate, they shall be able to adopt urgent measures, acting in their capacity as joint representatives; f) to request the judicial authorities the application of the pertinent measures to protect minors and persons with disabilities who are exposed to serious or imminent risks to their physical or moral health, regardless of their family or personal situation. […] k) to bring to the attention of the competent judicial authority the acts or omissions of judges, court officials or personnel of courts of law that they consider are subject to disciplinary sanction and require the application thereto […]". *Cf.* Article 54, Law 24.946/1998 (file of appendices to the brief of pleadings and motions, volume VII, page 3155).

381 Statement by the expert witness Gustavo Daniel Moreno at the public hearing held on February 27, 2012.

382 *Cf.* Brief of the Juvenile Defender's Office of October 24, 1996 (file of appendices to the report, volume I, appendix 6, page 169).

383 *Cf.* Brief of Sebastián Furlan of October 28, 1996 (file of appendices to the report, volume I, appendix 6, page 171).

241. In this regard, the Court considers that, in order to facilitate access to justice for vulnerable persons, the participation of other State institutions and bodies is essential so that they can assist in the judicial proceedings in order to ensure that the rights of such persons are protected and defended. To this end, the United Nations Convention on the Rights of Persons with Disabilities contains a specific article regarding the scope of the right to access to justice in which it is provided that[384]: i) States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants.

242. Moreover, the Court recalls that while procedural rights and their related guarantees apply to all persons, in the case of children the exercise of those rights requires, due to the special their special status as minors, that certain specific measures be adopted for them to effectively enjoy those rights and guarantees.[385] The types of specific measures are determined by each State Party and may include direct or joint representation,[386] as the case may be, of the minor in order to reinforce the guarantee of the principle of the best interests of the minor. Moreover, the Court considers that there may be cases in which, depending on the person's level of disability, it is advisable for that individual to receive the counsel or intervention of a public official to ensure the effective protection of his or her rights.

243. In this regard, the Court notes that the Juvenile Defender was not notified by the judge of the civil proceeding while Sebastián Furlán was a minor or later on, when the expert reports revealed the extent of his disability; therefore, Sebastián Furlan was not given the opportunity, which is mandatory at the domestic level, to participate in the civil proceeding, to which he could have contributed thanks to the powers granted by law (*supra* para. 238). Bearing in mind the foregoing, in the specific circumstances of the present case, the Defender of Juveniles and Persons with Disabilities would have provided a mechanism to address Sebastián Furlan's vulnerability, given the negative effects produced by the combination of his disability and his and his family's very limited financial resources which, as mentioned previously, (*supra* para. 201), meant that his impoverished circumstances had a disproportionate impact on his condition as a person with disabilities. Accordingly, the Court concludes that the State violated the right to a fair trial as embodied in Article 8(1), in relation to Article 1(1) of the American Convention, to the detriment of Sebastián Claus Furlan.

F) Right to personal integrity and access to justice for the family of Sebastián Furlan

Arguments of the Commission and of the parties

244. The Commission alleged the violation of the right to personal integrity to the detriment of Sebastián Furlan and his immediate family members, "his father (Danilo Furlan), his mother (Susana Fernández), his brother (Claudio Erwin Furlan) and his sister (Sabina Eva Furlan)". In this respect, the Commission argued that "the next-of-kin of victims of human rights can be considered victims as well" and argued that, in the instant case, "the delay in the process protracted the emotional distress of Sebastián's father, mother, brother and sister, and therefore [...] their right to psychological and moral

384 Article 13 of the Convention on the Rights of Persons with Disabilities.

385 Advisory Opinion OC-17/02, para. 98.

386 *Mutatis mutandi, Case of Atala Riffo and Daughters v. Chile*, para. 199.

integrity, as provided in Article 5(1) of the American Convention, was violated".

245. Furthermore, it argued that "the family did not receive counseling from the [Juvenile Defender's Office] or the support of any other entity in charge of social services for children with disabilities" and, consequently, the family had to finds ways to "manage on their own" and had to help Sebastián with "his daily needs and the long rehabilitation process." The Commission also pointed out that "during the processing [of the instant case], information was produced regarding the consequences suffered by the family and the unwarranted delay experienced by Sebastian's family, who had to take charge of all [his] care, treatment and rehabilitation needs."

246. For their part, the representatives argued that Danilo Furlan, Susana Fernández, Claudia Furlan, Sabina Furlan, Diego Furlan and Adrian Nicolás Furlan, as "immediate family members of a victim of human rights violations", should be considered as "direct victims of the violation of the right to mental and moral integrity, embodied in Article 5 of the Convention". They alleged that "the excessive delay in the civil proceeding protracted the emotional distress of the father, the mother, the brother and sister of Sebastian, who had to live with the consequences of the lack of care and special state protection and the consequences for Sebastian's health and social security." They further argued that this situation "had a devastating effect on the family" given that "the difficulties in dealing with Sebastian's new condition, without adequate State's assistance, critically affected "the relationships of different family members to the point of disintegration." As an example, they mentioned that "the divorce of Danilo Furlan and Susana Fernández […] is just one manifestation of that critical process."

247. The representatives also argued that the consequences of the accident "had a direct impact on all the family, [since] each of its members suddenly had to deal with new problems caused by this situation… [which] resulted in limitations and deficiencies in the care of Sebastián's siblings, Claudio and Sabina and the breakup of their parents' marriage." They mentioned that "[t]he lack of response by the State to their requests for help and conclusive facts (suicide attempts; lack of criminal responsibility in a criminal case; suit for damages)" had the following consequences: i) the family's roles were "reversed" because "the children took on duties that did not correspond to them; the mother began to work long hours to earn the income that the father could no longer generate because he had to devote himself exclusively to his son's recovery"; and ii) "Danilo and Susana neglected their children Claudio and Sabina."

248. The State argued that "the attached records do not show that the family" of Sebastián Furlan "had filed a claim regarding their personal integrity or had brought charges against the State on their own behalf together with Sebastián". Therefore, it considered that the domestic remedies for the alleged violation of Article 5 of the Convention were not exhausted in relation to Sebastián Furlan's family.

Considerations of the Court

249. This Court has stated on other occasions that the relatives of victims of human rights violations may, in turn, be victims. [387] The Court has considered that the right to mental and moral integrity of some family members has been violated when the suffering

[387] *Cf. Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 155, para. 83, and *Case of the Miguel Castro Castro Penitentiary v. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2006. Series C No. 160, para. 335.

they have endured was due to the actions or omissions of State authorities[388], taking into account, *inter alia,* the proceedings carried out to obtain justice and the existence of a close family relationship[389]. It has also been declared the violation of this right due to the suffering endured as a result of the violations committed against their loved ones.[390]

250. For the Court, it is clear that the State's role in creating or worsening a person's situation of vulnerability has a significant impact on the integrity of the persons who know him or her, especially on close family members who face the uncertainty and insecurity created by the violation of their immediate family or close relatives.[391] Thus, for example, in the case of *Yean and Bosico*, the Court concluded that the State had violated Article 5 of the Convention to the detriment of the girls' mothers and siblings, since the "vulnerable situation that the State imposed on the Yean and Bosico girls created uncertainty and insecurity, because of the very real fear that they could be expelled from the Dominican Republic, of which they were nationals, due to their lack of birth certificates, and to the various difficulties they faced in obtaining these documents."[392] Similarly, in the case of *Albán Cornejo* concerning a case of medical malpractice, the Court established that the failure of the judiciary to investigate the death of Laura Albán affected he personal integrity of her parents.[393]

251. In order to determine whether in this case there was a violation of the right to mental and moral integrity of Sebastián Furlan's family, the Court will analyze: i) the impact on the family group as a whole, and ii) the specific situation of each of the four members of Sebastián Furlan's family, his parents and his two siblings. The Court considers that the argument presented by the State, namely that the family had not exhausted the domestic remedies in relation to the alleged violation of Article 5 of the American Convention, is not admissible since it was not formally presented as a preliminary objection at the appropriate procedural moment.

252. From the testimonies rendered by the alleged victims, the Court emphasizes the continuous nature of the impact that the facts of this instant case had on the family of Sebastián Furlan. In this respect, Mr. Danilo Furlan declared that[394]: i) "the roles of the entire family were transformed, [he] devoted all [his] time to Sebastián; Susana had to work in order to prevent the family from becoming poorer"; ii) " [his] son's lack of recovery caused many sad things to happen in the family, [he] even got divorced due to the tension and distress existing in the entire family"; iii) "[e]verybody had to stop taking care of their own things to help and devote time to Sebastián, try to help him since the State fail[ed] to do it, but nothing was sufficient"; and vi) "currently, they do not have a good family social

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388 *Cf. Case of Vera Vera et al. v. Ecuador*, *Preliminary Objection, Merits, Reparations and Costs.* Judgment of May 19, 2011. Series C No. 226, para. 104.

389 *Cf. Case of Bámaca Velásquez v. Guatemala*. *Merits.* Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Vera Vera et al. v. Ecuador,* para. 104.

390 *Cf. Baldeón García v. Peru,* para. 128, and *Case of Ximenes Lopes v. Brazil*, para. 156.

391 *Cf. Case of the Girls Yean and Bosico v. Dominican Republic.* Judgment of September 8, 2005. Series C No. 130, para. 204.

392 *Cf. Case of the Girls Yean and Bosico v. Dominican Republic,* paras. 205 and 206.

393 *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of November 22, 2007. Series C No. 171, paras. 47 to 50.

394 Affidavit of Danilo Furlan, (Merits file, pages 686, 689, 692 and 693).

life, each person goes his own way [,…], they are humiliated, poor and exhausted." Similarly, Mr. Claudio Furlán testified that, at first, he and his sister were taken care of by his mother, "but [his] mother was working [because this father] took care of Sebastián much of the time, [for which reason] he had to leave his job and there was no source of income at home." He added that "[his] mother had to work and therefore [he] and Sabina, his sister, were left [to cope] as best we could."

253. From the evidence on file, the Court notes that, in several reports submitted to the case, different doctors and psychologists mentioned that: i) "the family group is severely disturbed and the risk of violent action is high"[395]; "the serious and dangerous family situation" and the urgency in "assisting, monitoring and watching [Mr. Danilo Furlan]"[396]; iii) "[there were] serious conflicts between the parents who mutually undermined each other, and indirectly encouraged their children to take sides" [397], and v) "the reversal of roles in Sebastián's family, where Sebastián took the place of his mother as the object of control of the father [and] the father took the place of the wife as caretaker of the children, created a highly conflictive relationship between Sebastián and his father."[398] As a result, it was recommended that "outpatient psychiatric-psychotherapeutic treatment at the Posadas National Hospital[399] be provided to the entire family group.[400] The conclusion of the socio-environmental report prepared in the instant case was that "[a]ll of this accounts for how Sebastián's accident caused a breakup of the family situation [...] first, the break up of the marriage and then the division of the care and responsibilities toward the children."[401] The change in the family structure was described as the transition "from a nuclear family with shared parental responsibilities to a one-parent family headed by the father."[402]

254. As is evident, the Furlan family received no proper guidance or accompaniment to provide better family support for Sebastián Furlan's rehabilitation. In this regard, this Court considers it pertinent to emphasize that "the best way to care for and assist children with disabilities is within their own family environment, provided that the family has sufficient means in every sense."[403] This implies that families must have comprehensive support to be able to take on that responsibility in an appropriate manner. This type of support should include "the education of the parents and siblings, not only as regards the disability and its causes, but also the special physical and mental needs of each child [and] the psychological support to cope with the pressure and difficulties that children with disabilities entail for

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395 *Cf.* Report of the Center for Family Investigation of May 8, 1994 (file of appendixes to the report, volume II, appendix 7, pages 887 and 888).

396 *Cf.* Reports of Evita Hospital of March 11 and 15, 1994 (record of appendices to the report, volume II, appendix 7, page 774).

397 *Cf.* Report of the Family Investigation Center, May 8, 1994, pages 887 to 889.

398 *Cf.* Expert Report of Doctor Luis Garzoni, pages 424 to 432.

399 Medical certificate issued by the Hospital Nacional Posadas of January 8, 2009 (file of appendices to the brief of pleadings and motions, page 2422).

400 *Cf.* Order issued by Judge in Case 27.428, page 907.

401 *Cf.* Socio-environmental report on Danilo Furlan prepared by Marta Celia Fernández (file of appendices to the brief of pleadings and motions, volume V, page 2501).

402 *See* Socio-environmental report on Danilo Furlan prepared by Marta Celia Fernández (file of appendices to the brief of pleadings and motions, volume V, page 2502).

403 Committee on the Rights of the Child, General Comment No. 9, para. 41

families."[404] For its part, Article 28 of the United Nations Convention on the Rights of Persons with Disabilities recognizes the right of such persons and their families living in situations of poverty to assistance from the State with disability-related expenses, including training, counseling, financial assistance and respite care.[405]

255. In this case, the Furlan Fernández family did not receive such support, which triggered a number of negative effects in the family's normal development and functioning (*supra* para. 254). Furthermore, the Court finds that the few attempts by the State to promote individual or group therapy[406] were of limited scope for the adequate management of Sebastián Furlan's mental disability. The State's omission in relation to the non-accompaniment of this family resulted in the rehabilitation programs being interrupted and not implemented during a crucial stage that would ensure their effectiveness. Likewise, the Court points out that the expert evidence emphasized the need for a more direct intervention to support Sebastián Furlan and his family and with regard to the language and behavioral problems he suffered.[407]

256. Therefore the Court finds that the accident suffered by Sebastián Furlan, as well as the length of the civil proceeding and the other unsuccessful actions taken to provide him with medical treatment, had an impact on the family unit formed by Danilo Furlan, Susana Fernández, Claudio Furlan and Sabina Furlan. Said impact caused a state of distress and permanent despair in the family, which ended up breaking the family ties and producing other type of consequences. Furthermore, the Furlan Fernández family did not receive assistance in providing better support for Sebastián Furlan, which triggered a number of negative impacts on the family's normal development and functioning.

257. Specifically, regarding Danilo Furlan, the Court stresses that it has been proven, in the first place, that Mr. Danilo Furlan suffered because he was the person responsible for caring for the minor and later on, for the adult with a disability,[408] since he did not receive full and timely assistance from the State (*supra* para. 255). In fact, Mr. Danilo Furlan had an active role in obtaining the few rehabilitation measures taken in favor of Sebastián Furlan. The medical reports also concluded that this situation entailed great suffering for the father who, as from the time of the accident, "became fully responsible for his son, both for his physical rehabilitation and for the general supervision of his conduct."[409] Mr. Danilo Furlan stated that he "even made equipment" for his son's rehabilitation and that at "those moments he felt that everything depended on [him]" and that "nobody guided [him] in his despair."[410]

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404 Committee on the Rights of the Child, General Comment No. 9, para. 41

405 See also Preamble of the International Declaration on the Rights of Disabled Persons

406 *Cf*. Clinical History of Sebastián Furlan issued by the Hospital Evita on April 7, 1994 (file of appendices to the report, page 813). In addition, the following recommendations were made: i) monitoring and follow-up treatment for the father; ii) treatment and monitoring for the mother; iii) social monitoring of the family situation, and iv) psychological treatment for Sebastián Furlan to enable him to decide what he wants to study and which activities he wants to perform.

407 The expert witness Rodríguez emphasized that it was essential to provide "family therapy to train the family members on how to manage and help the boy." Affidavit of Doctor Estela del Carmen Rodríguez, February 10, 2012 (Merits file, volume II, page 759).

408 *See* Report of Psychologist Marta S. Rumie of June 1991 (file of appendices to the report, volume I, appendix 6, pages 397 and 398).

409 *See* Report of Psychologist Marta S. Rumie of June 1991, pages 397 and 398.

410 Mr. Furlan also stated, "[I] gradually learned how to help with the exercises they did with him in the hospital, so I started doing it at home, throughout the day and every day (respecting and making others respect

258. For his part, Mr. Claudio Furlan stated that:

> Because it was costly to continue the treatment, I recall that the physiotherapist had visited the house about five times so there he learned how to repeat the exercises that Sebastián did with the professional and he replicated them at home. […his] father is good at working with metals and materials so he made some equipment for [Sebastián] to be able to recover at home; everything depended on this, he got into the pool, a small pool built at home so that he could be able to rehabilitate the psychomotor function and regain balance, because I recall that Sebastián could not walk when he left the hospital and had no coordination in his movements; [his] father, in order for him to move his limbs, lifted him above waist level, without touching the floor and did as if he was walking in the air and they got into the pool and started moving and stimulating the motor skills. [411]

259. Moreover, the Court notes that it was Mr. Danilo Furlan who had to seek the financial compensation for Sebastián Furlan and the family, and the health and social security benefits for his eldest son. This meant that Mr. Danilo Furlan had an active role in the domestic judicial proceeding:

> "He went to the court all the time. Time went by and the situation became more and more desperate. He never received an answer. It was very difficult for him to go to the courts. All the expenses he had to cover. Also, it wasn't easy, because going to the court, meant that somebody else had to take care of Sebastián. In spite of everything, [he] made [his] best efforts, but it was pointless. […] He never received an explanation about the delay of the proceeding; they simply told him that it would take a long time." [412]

260. Due to the foregoing, the socio-environmental report concluded that "Mr. [Danilo] Furlan was in a "vulnerable state" and that his son's accident "deeply affected his life."[413] Moreover, a psychological examination had determined that Mr. Danilo Furlan presented "a neurotic personality structure, with psychopathic traits of disharmonious actions in situations of increased amounts of environmental stress" and recommended that he be given outpatient psychiatric-psychotherapeutic treatment.[414]

261. Therefore, it is evident that the unwarranted delay in the proceeding, as well as the other steps taken by Mr. Danilo Furlan to obtain some kind of assistance for his son, caused him great suffering. Not only did he assume full responsibility for his son's personal care, but he also took charge of the domestic judicial proceeding. Mr. Danilo Furlan gave up his work, devoted his life exclusively to seek help, everywhere, for his son Sebastián Furlan. Therefore, this Court considers proven the violation of the right to mental and moral integrity of Mr. Danilo Furlan, as well as the impact produced on him by the lack of access to justice stemming from the judicial proceeding and its implementation.

262. As to Mrs. Susana Fernández, the Court considers proven her suffering and emotional stress, given that she not only had to relinquish her role within the family group (*supra* para. 254), but certain problems stemming from the difficulties in Sebastián Furlan's

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his sleeping hours) and also taking him to the coast, to lonely beaches. Throughout the day he was exercising or sleeping. There he began to walk, to have balance. All the physical therapy for his recovery I did it, I even made appliances for it. If I had followed the instructions of the Hospital Sebastian's activity would have been 50 times less than it was because for them he had to attend only one hour, twice a week." *Cf.* Affidavit of Danilo Furlan (Merits file, page 684).

411 *Cf.* Statement of Claudio Erwin Furlan rendered at the public hearing held in this case.

412 Affidavit rendered by Danilo Furlan, page 684.

413 *Cf.* Socio-environmental report prepared by Marta Celia Fernández, pages 2501 and 2503).

414 *Cf.* Reports of forensic doctor Manuel Mazaira of March 17, 1994 (record of appendices to the report, volume II, appendix 7, page 789).

rehabilitation had a negative impact on her marriage. Mrs. Fernández was emotionally separated from her husband,[415] and later found herself involved in a divorce[416]. Likewise, the breakup of the family unit negatively affected her role in the family, in which she had shared the parenting, due to the fact that this role was significantly reduced[417]. Moreover, it was Mrs. Fernández who had to provide the financial support for the household, since her husband gave up his job (*supra* para. 253).

263. For his part, Claudio Furlan also suffered the consequences produced by the events in this case. In particular, there is evidence in the case file which suggests that he "was also affected by the circumstances of the past and the roles that the family structure gradually assigned to each of its members"[418]. The Court notes that the impact of the events of December 1998 was so great on Mr. Claudio Furlan that "[he could] specify the date" on which his family disintegrated and he ended up with his father: "it was December 21, at two o'clock in the afternoon [when he] was nine years old."[419] Furthermore, he pointed out during the public hearing that he "could even remember the color of Sebastián's shoes" at the time of the accident since "these are things you can never forget, no matter how young you are." Mr. Claudio Furlan has suffered mentally from this situation to the point where he is constantly reliving his family's separation, he remembers specific details of his brother's accident and of his parents' separation.[420] As a consequence of the distress suffered, Mr. Claudio Furlan's life project revolves around his disabled brother and his father. For example, at one time, he changed his schedule and began attending night school in order to be able to accompany his brother and he currently lives very near Sebastián Furlan's home to be available in case of an emergency.[421]

264. Finally, Ms. Sabina Furlan was also affected by the circumstances of this case, as confirmed by the socio-economic reports, which describe the breaking of the family ties and the fact that she had to live alone with her mother, away from those who were once her dearest loved ones, her two brothers and her father.[422] Likewise, this Court considers proven that Sabina Furlan suffered from a lack of attention during her childhood due to the special care required by her older brother.[423] Furthermore, the consequences of these events continue to this day; for example, Danilo Furlan mentioned that "[to] date, [Sabina does not] talk [to her father] due to the terrible circumstances she lived through during

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415 During this interview Sebastián Furlan affirmed, ""my family is destroyed […]. [i]n fact, I have no family. My parents are separated". *Cf.* Medical-Psychological expert opinion submitted by Doctor Luis Garzoni, pages 424-432.

416 *Cf.* Decision issued by the Court of First Instance N° 10 in Civil and Commercial Matters of March 31, 1999 (file of appendices to the brief of pleadings and motions, volume V, page 2259).

417 *Cf.* Socio-environmental report prepared by Marta Celia Fernández, page 2502.

418 *Cf.* Socio-environmental report prepared by Marta Celia Fernández, page 2510.

419 *Cf.* Socio-environmental report prepared by Marta Celia Fernández, page 2509.

420 *Cf.* Socio-environmental report prepared by Marta Celia Fernández, page 2509.

421 *Cf.* Socio-environmental report prepared by Marta Celia Fernández, page 2509.

422 *Cf.* Socio-environmental report prepared by Marta Celia Fernández, page 2500.

423 "The situation of Sebastian and [his] full time commitment to him, due to the lack of help or the necessary means for a professional and specialized care, made [him] forget that he had a wife and when [he] realized this, it was too late. He also had [two] other children, Sabina and Claudio. At every opportunity they would reproach me for my lack of attention towards them, when Sebastián demanded so much more than I could give him". Affidavit rendered by Danilo Furlan, page 691.

Sebastián's most critical period."[424]

265. For all the aforementioned reasons, the Court considers that the disintegration of the family unit has been proven, together with the suffering endured by all the family members as a consequence of the delays in the civil trial, the manner in which the judgment was executed and the other problems that Sebastián Furlan faced in trying to obtain adequate rehabilitation. Accordingly, the Court considers that the Argentine State incurred in a violation of the right to personal integrity enshrined in Article 5 and of the right to access to justice established in Articles 8(1) and 25, in conjunction with Article 1(1) of the American Convention, to the detriment of Danilo Furlan, Susana Fernández, Claudio Erwin Furlan and Sabina Eva Furlan.

G) General conclusion on access to justice, the principle of non-discrimination and the right to personal integrity of Sebastián Furlan

266. The State argued that although "the petitioners mention [ed] the international standards in the sphere of non-discrimination and protection of children and of persons with disabilities and alleg[ed] that the Argentine State had violated the right to special protection" of Sebastián Furlan, they did not give any indication as to "the manner in which it had committed the violation of said right." The State held that the arguments of the alleged victims contained many generalizations and that these same arguments "were used as basis for claiming other rights that, according to them, the Argentine State had violated".

267. In this regard, the Court considers that the right to equality before the law and non-discrimination is comprised of two concepts: a negative concept related to the prohibition of arbitrary differentiation of treatment[425], and an affirmative concept related to the obligation of States Party to create real equal conditions towards groups who have been historically excluded or who are exposed to a greater risk of being discriminated.[426] Likewise, the Court recalls that the rights to physical, mental and moral integrity embodied in Article 5(1) of the American Convention, "requires not only that the State respect these (negative obligation) but also that the State adopt all appropriate measures to protect and preserve them (positive obligation), in compliance with the State's general obligation under Article 1(1) of the American Convention. "[427]

268. In the instant case, the Court emphasizes that minors and persons with disabilities must enjoy effective access to justice and benefit from a due legal process on an equal footing with those who do not face such disadvantages. To accomplish its objectives, the judicial process must recognize and correct any real factors of inequality facing those who are brought before the courts. The presence of conditions of inequality requires compensatory measures to help reduce or eliminate the obstacles and deficiencies that

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424 Affidavit rendered by Danilo Furlan (Merits file, page 689).

425 *Cf.* United Nations, Commission on Human Rights, General Comment N° 18, Non-Discrimination, 10/11/89, CCPR/C/37, para. 7; Advisory Opinion OC-18/03, para. 92.

426 Advisory Opinion OC-17/02, para 44; Advisory Opinion OC-18/03, para. 88; *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, para. 185, and *Case of López Álvarez v. Honduras*, *Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 170.

427 *Cf. Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 158, and *Case of the Brothers los Gómez Paquiyauri v. Peru. Merits, Reparations and Costs.* Judgment of July 8, 2004. Series C No. 110, para. 129.

impair or diminish an effective defense of their own interests.[428]

269. The Court has referred to the highly vulnerable situation of Sebastián Furlan, as a minor with a disability, living in a family with limited financial resources, for which reason the State was required to adopt all adequate and necessary measures to address such a situation. Indeed, it has been mentioned that the State has a duty to ensure the promptness in the civil proceedings, on which greater opportunities for rehabilitation depended. The Court has also concluded that it was necessary to ensure the intervention of the Juvenile Defender's Office or to seek a differentiated application of the law governing the manner in which the judgment is enforced, since these measures would have made it possible to remedy, to some extent, the disadvantageous situation in which Sebastián Furlan found himself. These elements show that that there existed *de facto* discrimination associated with the violations of the right to a fair trial, judicial protection and right to property already declared. Also, bearing in mind the facts outlined in the chapter on the legal effects caused to Sebastián Furlan in the context of the civil trial (*supra* paras. 197 to 203), as well as the impact that denying him access to justice had on his possibility of obtaining adequate rehabilitation and health care (*supra* paras. 197 a 203), the Court considers that the violation of the right to personal integrity has, in turn, been proven. Therefore the Court declares that the State failed to comply with its obligation to guarantee, without discrimination, the right to access to justice under the terms of Articles 8(1), 19, 21, 25(1) and 25 (2.c) of the American Convention, in relation to Article 1(1) therein, to the detriment of Sebastián Furlan.

VIII
REPARATIONS
(Application of Article 63(1) of the American Convention)

Arguments of the parties and of the Inter-American Commission

270. Based on the provisions of Article 63(1) of the American Convention,[429] the Court has stated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation[430] and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[431]

271. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in re-

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428 *Cf. The Right to Information on Consular Assistance within the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 119; Advisory Opinion Consultiva OC-18/03, para. 121, and *Case of Vélez Loor v. Panama*, para. 152.

429 Article 63(1) of the Convention stipulates that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of the right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

430 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 279.

431 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 62, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 279.

establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to repair the consequences of the violations.[432] Consequently, the Court has considered the need to award different measures of reparation in order to repair the harm integrally; thus, in addition to pecuniary compensation, measures of restitution and satisfaction and guarantees of non-repetition have special relevance to the harm caused.[433]

272. This Court has established that the reparations must have a causal relationship to the facts of the case, the violations declared, the damage proved and the measures requested to repair the respective damage. Hence the Court must observe this concurrence to rule appropriately and in accordance with the law.[434]

273. Based on the violations of the American Convention declared in the preceding chapters, the Court will proceed to analyze the claims submitted by the Commission and the representatives, together with the arguments of the State, in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,[435] in order to establish measures to repair the harm caused to the victims.

A) Injured party

274. The Court considers that considers the injured party, under the terms of Article 63(1) of the Convention, as the person who has been declared a victim of the violation of any rights recognized therein.[436] Consequently, this Court considers that Sebastián Claus Furlan, his parents Danilo Furlan and Susana Fernández, and also his siblings Claudio Edwin Furlan and Sabina Eva Furlan, are the injured parties and, as victims of the violations declared in Chapter VII, they will be considered as beneficiaries of the reparations ordered by the Court.

275. The representatives requested that the individuals who were not named as presumed victims by the Inter-American Commission in the Merits Report be included as beneficiaries of the reparations. They also argued that Sebastián Furlan's two sons (Diego Germán and Adrián Nicolás Furlan Sarto), who are currently aged 4 and 3 years, should be considered presumed victims. They stated that, regardless of the fact that these children "were not named as presumed victims" in the Commission's Merits Report, the relevant point is that "not only have they been indicated as such in different communications sent by Danilo Furlan to the Commission, but also that, in the said report, the Commission emphasized the fact that Sebastián has two sons, the younger of whom also has developmental problems." They indicated that their "appropriate and timely identification by both Danilo Furlan and the Commission also means that the State is aware of this." Furthermore, they argued that the Court has precedents in this regard, "taking into account

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[432] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 280.

[433] *Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs.* Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 280.

[434] *Cf. Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 281.

[435] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7. Para. 25 to 27, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 283.

[436] *Cf. Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 30, 2008. Series C No. 187, para. 126 and *Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 26, 2012. Series C No. 244, para. 149.

the specifics of each case and the rights in respect of which a violation has been alleged, provided that the States' right to defense is respected. They added that the Court has also "considered sufficient, as regards the determination of the beneficiaries of the reparations," the "fact that the Court had been informed of their existence, at least indirectly, in the attachments to the application."

276. The State argued that "the only beneficiaries should be those named by the Commission in the Merits Report." However, the State left it up to the Court to "determine and individualize the beneficiaries of the potential reparations."

277. The Court emphasizes that, according to Article 35(1) of the Court's Rules of Procedure, the report referred to in Article 50 of the Convention must contain "all the facts that allegedly give rise to a violation and identify the alleged victims." In this regard, it is up to the Commission and not up to the Court to precisely identify the presumed victims in a case before the Court at the appropriate procedural moment.[437] In application of the new Rules of Procedure, this criterion has been ratified since the case of the *Barrios Family v. Venezuela.*[438] Consequently, the Court will not consider Diego Germán and Adrián Nicolás Furlan Sarto, the additional family members indicated by the representatives, as injured parties in this case, given that they were not considered as presumed victims in the Merits Report referred to in Article 50 of the American Convention.

B) Comprehensive measures of reparation: rehabilitation, satisfaction and guarantee of non-repetition

278. The Court stresses that the violations declared in the preceding chapters were committed to the detriment of a child and, subsequently, an adult with a disability, which means that the reparations awarded in the instant case must be in keeping with the social model relating to disability established in the international treaties on this matter (*supra* para. 133 to 135). This means that the measures of reparation do not focus exclusively on rehabilitation measures of a medical nature, but include measures that help persons with a disability overcome the obstacles or limitations imposed so that they can "achieve and maintain the maximum independence, physical, mental, social and vocational capacity, and full inclusion and participation in all aspects of life."[439]

B.1) Measures of rehabilitation

Arguments of the parties and of the Commission

279. The Commission requested that Sebastián "be given access to medical and other treatment in reputable specialized care centers, or the means to access this type of care in private centers."

280. The representatives indicated that "[h]aving regard to the non-pecuniary damages suffered by the presumed victims, it has become necessary that, with their consent, they be

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437 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2009. Series C. No. 198, para. 112 and *Case of Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 245.

438 *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, footnote 214.

439 Article 26 of the CRDP.

granted medical and psychological treatment in specialized centers," emphasizing the "necessity to provide Sebastián Furlan and his family with comprehensive treatment in accordance with their needs."

281. The State argued that "the medical and psychological care [for] Sebastián Furlan was not used [… and that] the Federal Health Program (PROFE) – to which he is entitled, provided that he complies with the affiliation requirement – provides specialized medical, psychological and psychiatric treatment for each specific case."

Considerations of the Court

B.1.1. Physical and mental rehabilitation

282. The Court emphasizes that health care must be available to everyone who needs it. All treatment for people with disabilities should be in the best interest of the patient, should aim to preserve their dignity and independence, reduce the impact of the disease, and improve their quality of life.[440] As to the scope of the right to rehabilitation under international law, Article 25 of the CRPD establishes the right to enjoy the highest attainable standard of health without discrimination on the basis of disability and the obligation by States to take all appropriate measures to ensure access for persons with disabilities to health services, including health-related rehabilitation.[441] Likewise, Article 23 of the Convention on the Rights of the Child refers to the measures that States should adopt regarding children with disabilities.[442]

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[440] *Cf*. *Case of Ximenes Lopes Vs. Brasil. Merits, Reparations and Costs.* Judgment of July 4, 2006. Series C No. 149, para. 109. See also: World Health Organization. Department of Mental Health and Substance Abuse. Ten Basic Principles of the Mental Health Care Law (1996), principles 2, 4 and 5. The CESCR has stated that the "right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services - including orthopedic devices - which enable persons with disabilities to become independent, prevent further disabilities and support their social integration. Similarly, such persons should be provided with rehabilitation services which would enable them "to reach and sustain their optimum level of independence and functioning." All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity." Committee on Economic, Social and Cultural Rights, General Comment No. 5, "Persons with Disabilities." United Nations Document E/1995/22 (1994), para. 34.

[441] Similarly, Article 25 of the CRPD establishes, *inter alia*, that States must: i) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs; ii) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons; iii) Provide these health services as close as possible to people's own communities, including in rural areas; and iv) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, *inter alia,* raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care. With regard to the rehabilitation of persons with disabilities, the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care define mental health care as the analysis and diagnosis of a person's mental condition, and the treatment, care and rehabilitation provided for a mental illness or suspected mental illness; the treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed periodically revised as necessary and provided by qualified professional staff (Principle 9) and the consequences of refusing or stopping treatment must be explained to the patient (Principle 11). Adopted by the United Nations General Assembly. Resolution 46/119 of December 17, 1991.

[442] Article 23 establishes that: "[…] 2. States Parties recognize the right of a mentally or physically disabled child to receive special care and shall ensure the extension, subject to available resources, to the eligible child and to those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's conditions and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of this article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreational opportunities in a manner

283. This Court has confirmed the harm caused to Sebastián Furlan by the delay in the proceedings that prevented him from obtaining access to medical and psychological treatment that could have had a positive impact on his life (*supra* paras. 197 to 203), as demonstrated by the expert medical opinions presented during the proceedings (*supra* paras. 197 to 203). The effects on Sebastián Furlan's household have also been demonstrated (*supra* paras. 252 to 265) and are supported by the socio-economic studies and the relevant expert opinions submitted in this case (*supra* paras. 252 to 265). In this regard, the Court stresses that the expert opinion provided in the instant case emphasizes that highlights in such cases, rehabilitation must be provided in an early and timely manner to achieve ideal results[443], that it must be continuous and must go beyond the initial stage of greater complexity. Rehabilitation must take into account the type of disability that the person has and be coordinated by a multidisciplinary team that addresses all the aspects of a person as whole.[444]

284. Consequently, the Court finds, as it has in other cases [445] that it is appropriate to order a measure of reparation that provides adequate treatment for the psychological and physical problems suffered by the victims as a result of the violations declared in this judgment. Therefore, the Court considers it necessary to order the State to provide, free of charge and immediately, through its specialized health care services, adequate and effective medical, psychological and psychiatric treatment to the victims, with their prior informed consent, including the provision of any medicines they may eventually require, also free of charge, taking into consideration the health problems of each one. Furthermore, the respective treatments must be provided, to the extent possible, at the facilities nearest to their places of residence and for as long as necessary.[446] In addition, when providing the psychological or psychiatric treatment, the specific circumstances and needs of each victim must be considered, so that they are provided with family and individual treatments, as agreed with each one, following an individual assessment.[447] The victims who require this measure of reparation, or their legal representatives, have six months as of notification of this Judgment to advise the State of their intention to receive medical, psychological or psychiatric treatment.[448]

B.1.2) Rehabilitation in relation to the life project

285. Regarding the presumed "damage to personal relationships" alleged by the representatives in the case of Sebastián Furlan, the Court, taking into account the reasoning

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conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."

443 In this regard, the expert witness Estela Rodríguez stated that: "[the] sooner the rehabilitation is started, the better the results will be because it prevents the brain from perpetuating the malfunction (it always does) during the recovery process." Affidavit rendered by medical expert Estela del Carmen Rodríguez of February 10, 2012 (Merits file, volume II, page 753).

444 *Cf.* Statement by expert witness Laura Beatriz Subies at the public hearing in this case.

445 *Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88. para. 57*, and Case of González Medina v. Dominican Republic,* para. 293.

446 *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211. para. 270, and *Case of González Medina v. Dominican Republic,* para. 293.

447 *Cf. Case of the 19 Tradesmen v. Colombia*. *Preliminary Objection*. Judgment of June 12, 2002. Series C No. 93, para. 278, and *Case of González Medina v. Dominican Republic,* para. 293.

448 *Cf. Case of Fernández Ortega et al. v. Mexico*, para. 252, and *Case of González Medina v. Dominican Republic,* para.293.

underlying this argument, interprets this expression as an allusion to the so-called damage to the "life project", which relates to the full self-realization of the person affected, taking into account his vocation, aptitudes, circumstances, potential and aspirations, which allow him to reasonably establish certain expectations for himself and achieve them.[449] The life project is expressed in expectations for personal, professional and family development that are possible under normal conditions.[450] This Court has indicated that "damage to the life project" entails the loss or very serious impairment of personal development opportunities that are irreparable or very difficult to repair.[451] It arises from the limitations suffered by a person in relating to and enjoying his personal, family or social environment owing to serious problems of a physical, mental, psychological or emotional nature. Comprehensive reparation of damage to the "life project" generally calls for reparation measures that go beyond mere monetary compensation, and involve measures of rehabilitation, satisfaction and non-repetition.[452] In some recent cases, the Court has assessed this type of damage and has repaired it.[453] Likewise, the Court notes that some of the higher domestic courts recognize relatively similar damages associated with "life relationships" or other analogous or complementary concepts.[454]

286. In this respect, Mr. Danilo Furlan described the abrupt change in Sebastián Furlan's life as follows:

> [t]he changes in Sebastian's life due to the lack of timely and comprehensive rehabilitation assistance were dramatic and total. He went from being a good student to being the last in the class, where he was allowed to sit in as a listener out of pity. He went from being a basketball player in the youth team of Club Ciudadela Norte to being barely able to walk. He went from talking fast to barely mumbling. For those who did not know him, the first impression was that he was drunk, therefore he couldn't even answer the phone. He went from having friends and classmates to being sidelined, discriminated against and absolutely alone without any social relationships. He went from having extraordinary agility in karate, basketball, swimming and other sports to being barely a shadow of his former self. He went from being invited to all the birthdays of neighbors and friends to being excluded and only attending a birthday when it was his or his brother's. He went from being free and independent to being limited, controlled, medicated and dependent. He went from having a tremendous will to live to trying to kill himself twice. He went from having a large family to nobody caring about him because he was not 'socially reliable.'"[455]

287. In short, Sebastian Furlan's life project was severely affected. Considering the difficulties that a child with a disability must face as regards their own limitations and

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449 *Cf. Case of Loayza Tamayo v. Peru. Reparations and Costs.* Judgment of November 27, 1998. Series C No. 42, para. 147.

450 *Cf. Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, para. 245.

451 *Cf. Case of Loayza Tamayo v. Peru. Reparations and Costs*, para. 150.

452 *Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 80, and *Case of Valle Jaramillo et al. v. Colombia.* paras. 227, 231.

453 *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 284 and 293, and *Case of Mejía Idrovo v. Ecuador*, para. 134.

454 *Cf.* Council of State of Colombia: Administrative Law Chamber, Third Section, Judgment of July 19, 2000, Case file 11,842, and Administrative Law Chamber, Third Section, Judgment of September 14, 2011, Case file 38,222. Also, see: Judgments of the Supreme Court of Justice of Colombia, Civil Court of Appeals, Judgment of May 13, 2008 and Criminal Cassation Chamber, Judgment of August 25, 2010.

455 Affidavit of Danilo Furlan (Merits file, volume II, folios 692 and 693). For her part, the witness Violeta Jano also expressed her views on this point: "Sebastian's life was never the same. As he could not walk or speak properly, he could no longer play sports or anything. He also lost all his friends because it was difficult to be with Sebastián. He did inappropriate things and was constantly in danger." Affidavit of Violeta Jano (Merits file, volume II, page 738).

possible integration difficulties, particularly in the social sphere and in school, the expert opinion emphasized that Sebastian Furlan should have received specialized care. In fact, expert witness Rodriguez indicated that:

> A psychologist should have intervened to supervise learning and social aspects with his peers at school. There are no school reports, nor do we know if there was a school department to intervene. The school team and the health team should have worked together, considering that this is a child who finished a school year healthy and began the next year in a situation of Disability. [456]

288. Also, bearing in mind that the lack of appropriate rehabilitation has had a negative impact on Sebastián Furlan in the different social, work and educational spheres (*supra* paras. 197 to 203), the Court finds that he must be offered access to rehabilitation and training services and programs based on a multidisciplinary assessment of his needs and capabilities.[457] This should take into consideration the social model to address disability (*supra* paras. 133 to 135), since this provides a broader approach to the rehabilitation measures for persons with disabilities. Therefore, the Court orders the Argentine State to create a multidisciplinary team which, taking into account the opinion of Sebastián Furlan, will determine the most appropriate measures of protection and assistance for his social, educational, vocational and labor insertion. Also, in determining these measures, the assistance required to facilitate their implementation must be taken into account, so that, by mutual consent, treatment can be provided at home or in locations near his place of residence**.** The State shall submit annual reports on the implementation of this measure for a period of three years, once implementation of said mechanism begins.

B.2) Measures of satisfaction

289. The representatives requested "the publication of the judgment in three daily newspapers with wide circulation [in Argentina]." The State made no observations in this regard.

290. The Court orders, as it has in other cases,[458] that the State publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court, once, in the Official Gazette; (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this Judgment in its entirety, available for one year on an official website.

B.3) Guarantees of non-repetition

B.3.1) Access to information on health and social security

Arguments of the parties and of the Commission

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[456] Affidavit of Doctor Estela del Carmen Rodríguez of February 10, 2012 (Merits file, volume II, page 760). In this regard, the expert Alejandro Morlacchetti said "... that the State's obligations with respect to persons with disabilities is to provide, facilitate and enable educational centers where that person, according to their degree of disability, is integrated to the school system [...] so he is as close as possible and as little as possible excluded of the existing educational system." Statement by expert Alejandro Morlacchetti at the public hearing.

[457] Article 26 of the Convention on the Rights of Persons with Disabilities

[458] *Cf. Case of Cantoral Benavides v. Peru. Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40, para. 79*,* and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 307.

291. The representatives requested, as a measure of satisfaction, the issue of regulations to the National Mental Health Act (Law 26,657) of November 25, 2010, considering that "[t]he progress made in the said law with regard to rights remains merely a promise."

292. The State argued that it "had ratified the Convention on the Rights of Persons with Disabilities in 2008 and that, since then, it had been in the process of adapting domestic law and practices in order to comply with the provisions of this treaty." In particular, the State mentioned Laws Nos. 22,431 and 24,901, "which introduce the use of a single disability certificate and establish the system of basic integrated rehabilitation and training services for people with disabilities." Regarding Law No. 22,431, the State asserted that "it creates a comprehensive protection system for persons with disabilities to ensure that they obtain medical care, education and social security, as well as granting them exemptions and exonerations that may, insofar as possible, counterbalance the disadvantage caused by their disability." The State indicated that this law creates the mechanism of the single certificate of disability, which grants "free access to public transport […] in trains, metros, and buses, the right to free parking and transit […] and other benefits […] such as family allowances, tax exemption […], tourism [and] access to 100% coverage for treatment and for medicines for the disability diagnosed on their certificate. Regarding Law No. 24,901, the State indicated that this law "establishes a series of basic entitlements [such as] rehabilitation services [...], therapeutic educational services […], educational and assistance services" and provides "the coverage of specific services, alternative systems for the family group, and complementary benefits under social welfare mechanisms."

293. Also, the State pointed out that "free and universal public health care has been and is one of the historic basic pillars of the Argentine State's public policy, in compliance with the relevant international standards, and is without precedent in the region." It indicated that "in addition to the benefits provided by the public health care service, there is an extra benefit for those who are unable to work and who do not have relatives with the duty to provide for their subsistence or, have such parents, but the latter are not in a situation to be able to provide assistance," which is "covered by the federal program "*Incluir Salud*," [which] provides medical and psychiatric care and also assistance by other specialized disciplines."

Considerations of the Court

294. The Court has already confirmed the impact produced on the right to the personal integrity of Sebastián Furlan due to lack of access to timely rehabilitation which would have provided him with better opportunities in life (*supra* paras. 197 to 203). Bearing in mind that the State has a legal framework that could prevent situations such as this from being repeated, the Court considers it important to enforce the obligation of active transparency in relation to the health and social security benefits to which people with disabilities are entitled in Argentina. This imposes on the State the obligation to provide the public with the maximum amount of information, in a proactive manner, regarding the information needed to obtain said benefits. This information should be comprehensive, easily understood, available in simple language and up to date. Also, given that large segments of the population do not yet have access to new technologies, and yet many of these rights may depend on their obtaining information on how to exercise them, in these circumstances the State must find efficient ways to fulfill its obligation of active transparency.[459]

[459] *Mutatis mutandi, Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151, para. 79. Also, the extent of this obligation is specified in the resolution of the Inter-American Juridical Committee on the "Principles on the Right of Access to Information," which establishes that "Public bodies should disseminate information about their functions and activities —including […] their policies,

295. Consequently, the Court considers that within the framework of the implementation of Argentine laws that regulate access to health and social security benefits, the State must adopt the necessary measures to ensure that as soon as a person is diagnosed with serious problems or aftereffects related to disability, that person or his family is provided with a charter of rights that summarizes, in a concise, clear and accessible manner, the benefits contemplated in the aforementioned rules, the standards for the protection of persons with mental disabilities established in this Judgment and other related public policies, as well as the institutions that can provide assistance in demanding the fulfillment of their rights. The State shall report annually on the implementation of this measure for a period of three years, once implementation of said mechanism begins.

B.3.2) Legal reforms to civil proceedings and the execution of judgments in cases involving minors and persons with disabilities

Arguments of the parties

296. The representatives requested, as measures of non-repetition, reforms to the code of civil procedure and the legal regimen for the execution of judgments. Regarding the civil procedure, they called for a "reformulation of the civil procedure models, for the most part formal and written, which have an impact on the duration of the proceedings, on the dispersion of actions and on the absence of direct personal contact between the judge and the parties." They considered that a reform should contemplate, at least: "(a) the structure of litigation by hearings; (b) the preponderance of the principles of immediacy and convergence (c) increasing the duties of the judge as custodian of rights and guarantees, together with systems to monitor fulfillment of this role; (d) strengthening compensation provisions, and (e) an interdisciplinary approach to cases of individuals in vulnerable situations." They mentioned the following changes as necessary reforms for "all cases, but especially for minors and/or persons with any type of disability": (i) "proceedings by means of a hearing when its purpose concerns the interests of a child, adolescent or person with disabilities"; (ii) that "judges must obligatorily attend the hearings"; that "in trials [involving] children, adolescents or persons with disabilities […], when necessary, the judge must take steps to prevent harm and to provide protection"; (iii) that "the proceedings must be brief [in cases of] protection, rehabilitation and compensation of children, adolescents or persons with disabilities"; that "minors and persons with disabilities must be heard personally by the judge in a hearing"; that "the right to request precautionary measures of protection for minors and persons with disabilities must be established," (iv) and that "a prompt procedure for execution of the judgment should be established, paying special attention to cases [relating to] any social right such as the right to health care and/or to social security." The representatives also requested an amendment to the special federal appeal remedy established in Article 280 of the Code of Civil and Commercial Procedure of the Nation, to "establish a legal time frame within which the Supreme Court must issue a ruling when an appeal has been filed."

297. As to the regulatory system for the execution of judgments, the representatives requested "[t]he reform of the legislation that imposes measures of deferred payment in the case of execution of judgments against the State, so that all the cases in which the plaintiff suffers from disabilities or health problems that require medical treatment or special care

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opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts— on a routine and proactive basis, even in the absence of a specific request, and ensure that the information is accessible and understandable." Inter-American Juridical Committee, "Principles on the right of access to information", 73° Regular Session, August 7, 2008, OAS/Ser. Q CJI/RES.147 (LXXIII-O/08), operative paragraph 4.

are expressly excepted." They requested that Law 25,344 be amended so that "the courts may determine the special situations and cases that should be excluded from consolidation by the judges when delivering judgment," and for the establishment of "some type of system that gives preference to payment in cases where a situation that affects the right to health care and/or social security is confirmed."

298. Regarding the representatives' request that the Court order amendments to the code of civil procedure, the State considered this "totally vague, wide-ranging and incoherent," and indicated that "the Code of Civil and Commercial Procedure of the Nation […] was reformed in 2001, in line with the relevant international standards and with the vague claims submitted by the alleged victims." It indicated that Articles 34 and 36 of the Code of Civil and Commercial Procedure of the Nation establish that "judges act in their personal capacity in the proceedings and may request multidisciplinary assessment through the introduction of experts."

299. With respect to the request for legislative reforms concerning the system for the execution of judgments, the State argued that "legislation on economic policy is outside the [Court's] sphere of competence," owing to the reservation made by the State with regard to Article 21 of the Convention. It also indicated that "the system for the execution of judgments established in Law 23,928 was amended by Law 25,344, which, in Article 18, establishes that the National Executive may order the exclusion from the system of consolidation of vouchers "under exceptional circumstances related to situations of abandonment and indigence."

Considerations of the Court

300. The Court recalls that Article 2 of the Convention requires States Parties to adopt, based on their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights or freedoms protected by the Convention.[460] In other words, States not only have the positive obligation to adopt the necessary legislative measures to guarantee the exercise of the rights embodied in the Convention, but they must also avoid promulgating laws that prevent the free exercise of those rights, and eliminate or amend laws that protect them.[461] Therefore, the Court recalls that, in the context of the obligations stemming from Articles 1(1) and 2 of the Convention, and according to the standards described in this Judgment (*supra* paras. 125 to 139), the States must take steps to reduce structural barriers or limitations and to give the appropriate preferential treatment to persons with disabilities, in order to achieve the objective of their full participation and equality within society.

301. In this case, the Court merely examined the duration of the judicial proceedings and the obstacles to access to health care, rehabilitation and social security services. The Court did not analyze the compatibility of a specific provision with the American Convention, which was not an element of this case. Moreover, the representatives did not provide sufficient evidence to allow the Court to infer that the violations declared in this case stem from a problem in the laws themselves. Other proposed reforms relate to fundamental matters that are intrinsic to the regulation of the Argentine civil procedure. The representatives did not provide further information that would allow the Court to conclude that the regulation of the Argentine civil procedure, as established by the law, contains normative flaws in relation to

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460 *Cf. Case of Gangaram Panday v. Suriname. Preliminary Objections*. Judgment of December 4, 1991. Series C No. 12, para. 50 and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 221.

461 *Cf. Case of Gangaram Panday*. *Preliminary Objections*, para. 50 and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 221.

the disputes examined in this case. Therefore, the Court abstains from ordering the legislative reforms requested by the representatives in respect of the amendment of the National Code of Civil and Commercial Procedure.

302. Furthermore, as established in its case law, the Court recalls that it is aware that the domestic authorities are subject to the rule of law and, thus, are obliged to apply the legislative provisions in force.[462] However, when a State is a party to an international treaty such as the American Convention, all its organs, including the judges and other bodies involved in the administration of justice, are also subject to it, which obliges them to ensure that the effects of the Convention's provisions are not lessened by the application of norms that are contrary to its object and purpose.

303. The judges and organs responsible for the administration of justice at all levels are obliged to exercise *ex officio* control to ensure that domestic norms are in line with the American Convention, within their respective spheres of competence and the corresponding procedural regulations. In this task, the judges and organs for the administration of justice must take into account not only the treaty, but also its interpretation by the Inter-American Court, as the final interpreter of the American Convention.[463]

304. Thus, for example, the highest courts of the region, such as the Constitutional Chamber of the Supreme Court of Justice of Costa Rica,[464] the Constitutional Court of Bolivia,[465] the Supreme Court of Justice of the Dominican Republic,[466] the Constitutional Court of Peru,[467] the Supreme Court of Justice of the Nation of Argentina,[468] the Constitutional Court of Colombia,[469] the Supreme Court of the Nation of Mexico,[470] and the Supreme Court of Panama[471] have all referred to and applied this control of compatibility with the Convention, taking into account interpretations made by the Inter-American Court.

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462 *Cf. Case of Almonacid Arellano et al. v. Chile*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124 and *Case of Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Serie C No. 239, para. 281.

463 *Cf. Case of Almonacid Arellano et al.*, para. 124 and *Case of Atala Riffo and Daughters v. Chile*, para. 282.

464 *Cf.* Judgment of May 9, 1995 delivered by the Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Action of unconstitutionality. Opinion 2313-95 (File 0421-S-90), considering paragraph VII.

465 *Cf.* Judgment of May 10, 2010, delivered by the Constitutional Court of Bolivia (Case file No. 2006-13381-27-RAC), section III.3. on "the Inter-American Human Rights System. Grounds for and effects of the judgments delivered by the Inter-American Court of Human Rights."

466 *Cf.* Decision No. 1920-2003 issued by the Supreme Court of Justice of the Dominican Republic on November 13, 2003.

467 *Cf.* Judgment delivered by the Constitutional Court of Peru on July 21, 2006, (Case file No. 2730-2006-PA/TC), reasoning #12 and judgment 00007-2007-PI/TC issued on June 19, 2007 by the Constitutional Court of Peru in Plenary (Lawyers' Professional Association of El Callao v. Congress of the Republic), reasoning #26.

468 *Cf.* Judgment issued on December 23, 2004, by the Supreme Court of Justice of the Argentine Nation (Case file 224. XXXIX), "Espósito, Miguel Angel re/incidental plea of prescription of the criminal action filed by his defense counsel," considering paragraph 6 and Judgment of the Supreme Court of Justice of the Argentine Nation, Mazzeo, Julio Lilo et al., appeal for annulment and unconstitutionality. M. 2333. XLII. and others of July 13, 2007, para. 20.

469 *Cf.* Judgment C-010/00 delivered by the Constitutional Court of Colombia on January 19, 2000, para. 6.

470 *Cf.* Plenary of the Supreme Court of Justice of Mexico, Case file "Miscellaneous" 912/2010, ruling of July 14, 2011.

471 *Cf.* Supreme Court of Justice of Panama, Decision No. 240 of May 12, 2010, ordering compliance with the judgment of January 27, 2009, of the Inter-American Court of Human Rights in the case of Santander Tristan Donoso *v.* Panama.

305. In conclusion, based on the control of compatibility with the convention, and judicial and administrative interpretations, judicial guarantees must be applied in this case in accordance with the principles established in this Court's jurisprudence.[472] This is of particular relevance in light of the Court's observations concerning the need to take into account any situation of vulnerability facing a person, especially in the case of minors or persons with disabilities, in order to guarantee them a differentiated treatment with regard to the duration of judicial proceedings and also in the context of the proceedings in which the payment of court-ordered compensation is established (*supra* para. 204, 217 and 222).

B.3.3) Training for public officials and cooperation between State institutions

306. As other guarantees of non-repetition, the representatives requested: (i) the training of public officials on the rights of persons with disabilities; (ii) the organization of awareness-raising campaigns about the rights of persons with disabilities; (iii) the creation of a specific reinsurance to guarantee access to justice, and (iv) strengthening of intra- and inter-institutional coordination between the National Advisory Committee for the Integration of Persons with Disabilities (hereinafter "CONADIS"), health care providers and other public programs, and the courts. Regarding the training courses and the awareness-raising campaign, the representatives requested "the establishment of judicial training courses to ensure that judges make a real commitment in relation to their powers to conduct the proceedings [… and] the training of government agents who may have some influence on the effective enjoyment of rights of persons with disabilities," and also "the organization of awareness-raising and information campaigns on the rights granted by law to persons with disabilities and the procedures and measures required to access them." They requested that "measures be adopted to ensure specific guarantees of access to justice for those in a vulnerable situation, regulating the obligations of the public bodies, especially of the courts, as agents of information, and the application of existing mechanisms for free legal assistance and protection." They also asked that "the necessary measures be adopted to improve coordination between CONADIS, health care providers and other public programs and the Judiciary, in order to promote access to information and the exercise of the rights of persons with disabilities."

307. The State pointed out that "the measure[s] […] sought by the representatives […] are already established under Argentine law." It argued that it "regularly offers training through different public entities" and "facilitates and strengthens access to justice for persons [with disabilities], as well as promoting activities related to legal and social community programs." It added that "currently, various information campaigns are under way in the media and on billboards on the rights of persons with disabilities" through organizations such as CONADIS and others. It considered that "CONADIS is responsible for providing counseling services to individuals (persons with disabilities or their family members), to government agencies and to non-governmental organizations on legal matters related to disability."

Considerations of the Court

308. The Court takes cognizance of the actions carried out by the State with regard to training for officials, information campaigns and inter-institutional cooperation to strengthen services for persons with disabilities. Nevertheless, bearing in mind the violations that have been declared to the detriment of a person with disabilities in relation to the duration of judicial proceedings (*supra* para. 204) and the execution of the judgment (*supra* para. 219),

[472] *Cf. Case of López Mendoza v. Venezuela. Merits, Reparations and Costs*. Judgment of September 1, 2011. Series C No. 233, para. 228 and *Case of Atala Riffo and Daughters v. Chile*, para. 284.

the Court considers it necessary that the State continue to provide training courses to officials of the Executive and the Judiciary and public information campaigns on the protection of the rights of persons with disabilities.[473] The training programs should reflect the principles of full participation and equality,[474] and be conducted in consultation with organizations for persons with disabilities.[475] In addition, the Court considers that the State should continue to strengthen cooperation between State institutions and non-governmental organizations in order to improve the care provided to persons with disabilities and their families. To this end, it should ensure that the organizations of persons with disabilities can play a significant role so as to guarantee that their concerns are duly taken into account and processed appropriately.[476]

C. Compensation

C.1) Pecuniary damages

Arguments of the parties and of the Commission

309. The representatives asked the Court to order, based on the principle of equity, "for the consequential damage suffered, […] payment of US $6,000 in favor of Danilo Furlan and US$ 3,000 in favor of Susana Fernández," as a result of the "expenses required for Sebastián's medical care, to purchase medicines and pharmaceutical products, to hire the ambulance service in order to carry out the different examinations, the cost of the rehabilitation treatments and consultations with private specialists," as well as "the obvious expenses that the interested parties had to incur for transport to the offices of the jurisdictional and administrative authorities where they processed the different stages of the proceedings."

310. As pecuniary damages for loss of earnings, the representatives requested "payment of $920,400 [Argentine pesos] (US$ 222,587) in favor of Sebastián Furlan." They argued that, in the case of Sebastián Furlan, "the State failed to provide prompt and adequate rehabilitation treatment, as well as comprehensive assistance for his situation of disability," which "involved a substantial change in his job opportunities, significantly reducing his prospects of advancement." They indicated that "if the violations had not occurred, Sebastián would have completed his secondary studies at the age of 19 [in] 1992, and would have been in a position to join the labor market as of 1993." They stated that, taking into account the current life expectancy for men in Argentina, "his overall productive capacity would have lasted until 2048." Bearing in mind the evolution of the minimum wage, which was changing and dynamic in Argentina, they calculated compensation for loss of earnings at US$ 222,587. With regard to Danilo Furlan, they pointed out that "the work he did […] was not based on a relationship of dependence, for which reason it is difficult to include documentation that would establish exactly the monthly he earned." They argued

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[473] This aspect is also related to the provisions of Article 13 of the United Nations Convention on the Rights of Persons with Disabilities, which establishes, in relation to access to justice, that States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

[474] *Cf.* Article 19(2) of the Standard Rules for the Equalization of Opportunities for Persons with Disabilities, resolution approved by the United Nations General Assembly, Forty-Eighth Period of Sessions, March 4, 1994, A/RES/48/96.

[475] *Cf.* Article 19(3) of the Standard Rules for the Equalization of Opportunities for Persons with Disabilities, resolution approved by the United Nations General Assembly, Forty-Eighth Period of Sessions, March 4, 1994, A/RES/48/96.

[476] *Cf.* Article 18 of the Standard Rules for the Equalization of Opportunities for Persons with Disabilities, resolution approved by the United Nations General Assembly, Forty-Eighth Period of Sessions, March 4, 1994, A/RES/48/96.

that "the permanent quest to obtain rehabilitation for his son Sebastián, his insistent recourse to the organs of justice and administrative mechanisms to further the different proceedings and accompany his son […] show the difficulties he faced in maintaining his income at the level [it was] prior to Sebastián's accident." Given "the need to devote himself exclusively to caring for his son and to the latter's recovery, [which] necessarily involved neglecting his work activities," the representatives requested compensation for loss of earnings of US$ 70,000 (seventy thousand United States dollars).

311. The State requested that the Court "take into account international parameters and standards set by [the Court's] consistent case law and reject these excessive pecuniary claims." Regarding the claims for reparation in favor of Sebastián, it argued that "[this] item was taken into account in the domestic Judgment" and that "future reparations should not be base on consequences of the accident that have already been considered by the national judicial system." As regards Danilo Furlan, the State argued that "the amount claimed […] exceeds the amounts established by this Court's case law" and that "not even the minimal supporting documentary or arithmetical evidence was provided to arrive at the figures indicated."

Considerations of the Court

312. As the Court has previously indicated (*supra* paras. 197 to 203), given the delay in the payment of compensation due to procedural delays, the Furlan family was unable to afford the necessary medical treatment that could have provided Sebastián Furlan with an improved quality of life. Expert witness Rodríguez indicated that, "if the suggested treatment had been implemented, together with sustained neuro-cognitive therapy, it is certain that, today, his functioning and quality of life would have been better."[477] Consequently, the alleged harm in relation to loss of earnings suffered by Sebastián Furlan, stemming from his inability to hold down a stable job owing to his mental disability which was not treated adequately, bears a causal relationship to the violation of Articles 5, 8 and 25 of the Convention, given the delays in the administrative judicial proceedings, in the execution of the judgment and the effects on his psychological well-being.

313. The equity principle has been used in this Court's case law to quantify non-pecuniary damage,[478] and pecuniary damage,[479] and to establish loss of earnings.[480] However, the use of this principle does not mean that the Court can act in a discretionary manner when establishing the compensatory amounts.[481] It is up to the parties to clearly prove the harm suffered as well as the specific relationship of the pecuniary claim to the facts of the case and the alleged violations.

314. Therefore, given the causal relationship between the violations found and the damage alleged, and the fact that the case involves a person with disability, the Court, having regard to the circumstances of this case, establishes in equity, the sum of US$

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477 *Cf.* Affidavit rendered by Dr. Estela del Carmen Rodríguez on February 10, 2012 (Merits file, volume II, page 763).

478 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs,* para. 27 and *Case of the Indigenous People of Sarayaku v. Ecuador,* para. 314.

479 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs*, Judgment of September 19, 1996. Series C No, para. 50 and *Case of the Indigenous People of Sarayaku v. Ecuador,* para. 314.

480 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs*, para. 50 and *Case of the Indigenous People of Sarayaku v. Ecuador,* para. 314.

481 *Cf. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs*, para. 87, and *Case of the Indigenous People of Sarayaku v. Ecuador,* para. 314.

120,000 (one hundred and twenty dollars of the United States of America) for Sebastián Claus Furlan.

315. Regarding Danilo Furlan, the Court considers that the prolonged quest for judicial compensation and the medical care required by his son took up a large part of his time, and this prevented him from devoting himself to the work activities needed to maintain his income from the sale of used cars. Since he suffered financial harm as a result of the need to seek medical assistance for his son, a causal relationship exists between the violations declared in this case and his loss of earnings.

316. The representatives attached documents related to Mr. Danilo Furlan's work activities[482]. However, given the types of financial activities carried out by Mr. Danilo Furlan, that evidence is not sufficient to exactly determine the damages for loss of earnings caused to his detriment. Therefore, the Court, based on the principle of equity, sets the sum of US$ 30,000 (thirty thousand dollars of the United States of America) for loss of earnings. In addition it is reasonable to suppose that Mr. Danilo Furlan and Mrs. Susana Fernández incurred expenses in having recourse to the courts of justice and state institutions in order to obtain justice and medical attention for Sebastián Furlan. Therefore, based on the principle of equity, the Court establishes as compensation for consequential damages the sum of US$ 6,000 (six thousand dollars of the United States of America) in favor de Danilo Furlan and US$ 3,000 (three thousand dollars of the United States of America) in favor of Susana Fernández.

C.2) Non-pecuniary damage

Arguments of the parties

317. The representatives requested compensation for non-pecuniary damages for the "emotional suffering […] reflected in the anxiety, anguish, uncertainty, expectations and frustration that judicial proceedings lasting so many years causes to anyone." Regarding Danilo Furlan, Susana Fernández, Claudio Edwin Furlan and Sabina Furlan they mentioned "the disintegration of the family following Sebastián's accident," as well as the divorce of Susana and Danilo, owing to "the damage to their mental and moral integrity and also the impact on their social and work relationships and on the dynamics of the family unit, which was never able to return to the living conditions that existed prior to the facts." They requested the Court to order the payment of US$ 150,000.00 (one hundred and fifty thousand dollars of the United States of America) in favor of Sebastián Furlan, US$ 100,000.00 (one hundred thousand dollars of the United States of America) in favor of Danilo Furlan, US$ 70,000.00 (seventy thousand dollars of the United States of America) in favor of Susana Fernández, and US$ 50,000.00 (fifty thousand dollars of the United States of America) each in favor of Claudio Furlan and Sabina Furlan. In addition, they requested compensation amounting to US$ 70,000.00 (seventy thousand dollars of the United States of America) in favor of Sebastián for the presumed harm to his relationships with others.

318. The State argued that these "considerations were already taken into account by the judgment of National Federal Civil and Commercial Court No. 5 of the City of Buenos Aires, and confirmed by the First Chamber of the National Federal Civil and Commercial Chamber." It added that the representatives sought "to duplicate the compensation by means of this application when, in fact, the underlying reason is their disagreement with the amount

[482] *Cf.* Documentation related to the work of Danilo Furlan, including receipts for the purchase and sale of cars and documents of transactions associated with that work (file of appendices to the brief of pleadings and evidence, volume VII, appendix XXVI, pages 2829 to 3083).

awarded in the domestic courts." It also argued that "the representatives […] provided no evidence concerning Sabina Furlan, or regarding the fact that her decision to live abroad was related to the alleged violations." It concluded that "the sums claimed […] exceed those established by this Court's case law."

Considerations of the Court

319. International jurisprudence has repeatedly established that the judgment may constitute *per se* a form of reparation.[483] Nevertheless, in its case law, the Court has developed the concept of non-pecuniary damages and has established that this "may include the suffering and anguish caused to the direct victims and their next of kin, the harm to values of great significance to the individual, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family."[484]

320. In this case, the Court finds that the impact caused by the delay in the judicial proceedings and its execution not only caused him distress, anxiety, uncertainty and frustration, but also affected him severely since his childhood as regards his personal, family, social and employment relationships, depriving him of the possibility of constructing his own autonomous and independent life project.

321. Considering the circumstances of this case, the suffering that the violations caused the victims (*supra* para. 265 and 269), as well as the change in their living conditions and other consequences of a non-pecuniary nature that they suffered, the Court deems it appropriate to set, in equity, the sum of US$ 60,000 (sixty thousand dollars of the United States of America) in favor Sebastián Furlan as compensation for non-pecuniary damage. In addition, the Court orders, as compensation for non-pecuniary damage and based on equity, the sums of US$ 30,000 (thirty thousand dollars of the United States of America) for Danilo Furlan and US$ 15,000 (fifteen thousand dollars of the United States of America) each for Susana Fernández, Claudio Erwin Furlan and Sabina Eva Furlan.

D. Costs and expenses

322. The representatives asked the Court to "order the State of Argentina to pay the costs and expenses incurred by the alleged victims and their representatives, both in the [domestic] proceedings and before the […]Commission." They requested that the Court "order the State of Argentina to pay Danilo Furlan US$ 3,500 (three thousand five hundred United States dollars) for costs, based on the equity principle." The State responded that "on the assumption that this case is not rejected, it is requesting that the costs and expenses be subsequently established based on equity."

323. As the Court has pointed out on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.[485] The Court has indicated that the claims of victims or their representatives concerning costs and expenses, and the evidence to support these, must be submitted to the Court at the first procedural opportunity granted them, namely in the pleadings and

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483 *Cf. Case of El Amparo v. Venezuela. Reparations and Costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Díaz Peña v. Venezuela*, para. 166.

484 *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs,* para. 84, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 318.

485 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C. No. 39, para. 79 and *Case of Forneron and Daughter v. Argentina. Merits, Reparations and Costs.* Judgment of April 27, 2012 Series C No. 242, para. 198.

motions brief, even though these claims may be subsequently updated, in line with any new costs and expenses incurred as a result of the proceedings.[486] Regarding the reimbursement of costs and expenses, the Court must prudently assess their scope, which includes the expenses incurred before the domestic jurisdiction, as well as those arising during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.[487]

324. In this case, the Court notes that there is no precise evidence in the case file with regard to the costs and expenses incurred by Danilo Furlan in relation to the domestic judicial proceedings and the processing of the case before the Commission. However, the Court finds that these proceedings necessarily involved financial outlays.

325. In addition, the Court notes that the expenses incurred by Danilo Furlan before judicial authorities and other State institutions in Argentina have already been taken into account in determining the compensation for pecuniary damages (supra para. 316). Bearing in mind the arguments presented by the representatives, as well as the factual circumstances of the case and the personal situation of Danilo Furlan, the Court determines, in equity, that the State must pay the sum of US$ 3,500 (three thousand five hundred dollars of the United States of America) to Danilo Furlan, for costs and expenses related to the processing of the case before the Commission. This amount must be paid within one year of notification of this Judgment. The Court further clarifies that, during the proceedings on monitoring compliance with this Judgment, the Court may order the State to reimburse the victim or his representatives the reasonable expenses incurred at that procedural stage.

E. Reimbursement of expenses to the Victims' Legal Assistance Fund

326. In 2008 the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System in order "to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."[488] In the instant case, the necessary financial assistance was granted to: (i) cover the costs of preparing and sending three affidavits; (ii) the costs of travel and accommodation for the two inter-American defenders, and Claudio Furlan, Gustavo Daniel Moreno and María Laura Subies to appear before the Court and render their testimony during the public hearing, and (iii) to cover all the expenses authenticated by the inter-American defenders.[489]

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[486] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 329.

[487] *Cf. Case of Garrido and Baigorria v. Argentina,* para. 82 and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 328.

[488] AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the Thirty-eighth General Assembly of the OAS at its fourth plenary session held on June 3, 2008, "*Creation of the Legal Assistance Fund of the Inter-American Human Rights System,"* Operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System,"* Article 1(1).

[489] The expenses authenticated included: (i) cost of the cognitive appraisal carried out at the "Center for Studies of the Memory and Conduct (INECO)" and signed by María Roca and Carolina Zeballos; ii) disbursements made up until the date of the presentation of the pleadings, motions and arguments brief; delivery by DHL of the USB flash drive containing the case file on computer files; (iii) receipt for the sending via courier of various attachments to the brief of pleadings, motions and arguments; (iv) professional fees and expenses budgeted by

327. The State had the opportunity to present its observations regarding the disbursements made in this case, which amounted to US$ 13,547.87 (thirteen thousand five hundred and forty-seven dollars and eighty-seven cents of the United States of America). The State made no observations in this regard (*supra* para. 14). Under Article 5 of the Fund's Rules, the Court must assess whether it is appropriate to order the State to reimburse the Legal Assistance Fund for the disbursements made.

328. Based on the violations declared in this Judgment, the Court orders the State to reimburse the said Fund the sum of US$ 13,547.87 (thirteen thousand five hundred and forty-seven dollars and eighty-seven cents of the United States of America) for the above-mentioned expenses which were incurred during the public hearing. This amount must be reimbursed within 90 days of notification of this Judgment.

F. Method of compliance with the payments ordered

329. The State shall make payment in compensation for pecuniary and non-pecuniary damages, as well as for costs and expenses (*supra* paras. 316, 321 and 325), directly to the victims or, if this is not possible, to their legal representatives, within one year of notification of this Judgment in accordance with the following paragraphs.

330. If any of the beneficiaries should die before they have received the respective amounts, these shall be delivered directly to their heirs, in accordance with the applicable domestic law.

331. The State shall comply with its pecuniary obligations through payment in United States dollars or the equivalent in Argentine pesos, using the exchange rate in force on the New York currency exchange market the day before the payment to make the respective calculation.

332. If, for reasons that can be attributed to the beneficiaries or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit said amounts in their favor in an account or a certificate of deposit in a solvent Argentine financial institution in United States dollars and on the most favorable financial terms permitted by banking practice and law. If, after ten years, said sums have not been claimed, they shall revert to the State with the accrued interest.

333. The amounts allocated in this Judgment as compensation and as reimbursement for costs and expenses must be paid in full to the person indicated, as established in this Judgment, without any deductions arising from possible taxes or charges.

334. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Argentina.

Public Notary Marcelo Plada to receive the testimony by affidavit of expert witness Dr. Estela del Carmen Rodríguez, and (v) reimbursement of the air fare Montevideo-Buenos Aires-Montevideo.

XI
OPERATIVE PARAGRAPHS

335. Therefore,

THE COURT

DECIDES,

by unanimity,

1. To dismiss the preliminary objections presented by the State, under the terms of paragraphs 23 to 30, 35 to 40 and 48 to 60 of this Judgment.

DECLARES,

by unanimity, that:

1. The State is responsible for the violation of Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, for having exceeded the reasonable term, to the detriment of Sebastián Claus Furlan, under the terms of paragraphs 147 to 152, 156 to 159, 164 to 175, 179 to 190 and 194 to 205 of this Judgment.

2. The State is responsible for the violation of the right to judicial protection and the right to private property, enshrined in Articles 25(1), 25 (2.c) and 21, in relation to Article 1(1) of the American Convention, to the detriment of Sebastián Claus Furlan, as established in paragraphs 209 to 223 of this Judgment.

3. The State is responsible for the violation of the right to be heard enshrined in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention to the detriment of Sebastián Claus Furlan, under the terms of paragraphs 228 to 233 of this Judgment.

4. The State is responsible for the lack of participation of the Juvenile Defender, in violation of the right to judicial guarantees established in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, to the detriment of Sebastián Claus Furlan, under the terms of paragraphs 237 to 243 of this Judgment.

5. The State is responsible for the violation of the right to personal integrity enshrined in Article 5(1) and the right to access to justice established in Articles 8(1) and 25, in relation to Article 1(1) of the American Convention, to the detriment of Danilo Furlan, Susana Fernández, Claudio Erwin Furlan and Sabina Eva Furlan, in accordance with paragraphs 249 to 265 of this Judgment.

6. The State is responsible for failing to comply with the obligation to guarantee, without discrimination, the right to a fair trial and the right to personal integrity under the

terms of Articles 5(1), 8.1, 21, 25(1) and 25(2.c) in relation to Articles 1(1) and 19 of the American Convention to the detriment of Sebastián Claus Furlan, under the terms of paragraphs 267 to 269 of this Judgment.

AND ORDERS

by unanimity, that:

1. This Judgment constitutes *per se* a form of reparation.

2. The State shall provide medical and psychological or psychiatric care, free of charge and in an immediate, appropriate and effective manner, through its specialized public health institutions, to the victims who request it, in accordance with the provisions of paragraphs 282 and 284 of this Judgment.

3. The State shall establish an interdisciplinary group which, taking into account the opinion of Sebastián Furlan, shall determine the measures of protection and assistance that would be most appropriate for his inclusion in the social, educational, vocational and employment spheres, under the terms of paragraphs 285 and 288 of this Judgment.

4. The State shall issue the publications indicated in paragraph 290 of this Judgment, within six months of its notification.

5. The State shall adopt the measures necessary to ensue that as soon as a person is diagnosed with serious problems or consequences related to a disability, that person or his family shall be provided with a charter of rights that summarizes in a concise, clear and easily understood manner the benefits provided under Argentine legislation, as established in paragraphs 294 and 295 of this Judgment .

6. The State shall pay the amounts stipulated in paragraphs 316, 321 and 325 of this Judgment, as compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses, as appropriate, under the terms and conditions stated in the aforementioned paragraphs, and shall reimburse the Victims' Legal Assistance Fund for the amount established in paragraph 328 of this Judgment.

7. The State shall, within the term of one year as of notification of this Judgment, submit a report to this Court concerning the measures adopted in compliance with this Judgment.

8. The Court shall monitor full compliance with this Judgment, by virtue of its authority and in compliance with its duties under the American Convention on Human Rights, and shall consider this case concluded once the State has fully complied with the measures ordered in this Judgment.

Judge Margarette May Macaulay informed the Court of her Concurring Opinion, which accompanies this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, August 31, 2012.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE MARGARETTE MAY MACAULAY IN THE CASE OF FURLAN AND NEXT OF KIN *v.* ARGENTINA

336. I voted for the adoption of this judgment of the Inter-American Court of Human Rights in the *Case of Furlan and Next-of-Kin V. Argentina*. However, in this concurring opinion, I wish to state my personal opinions about the possibility of resolving a part of the controversy from a perspective regarding the direct justiciability of economic, social and cultural rights under the scope of article 26 of the American Convention. Even though I concur with the decision of the Court, I wish to analyze the issue of the duty to respect and guarantee the right to health and the right to social security. My intent is to contribute to the discussions that the Court will have in the future regarding these issues .

337. Chapter III of the American Convention is intituled "Economic, Social, and Cultural Rights." This chapter includes article 26 as it's only provision and identifies it as "Progressive Development":

> The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

338. The Court's jurisprudence has established specifics which permit an understanding of the scope of the referral in Article 26 concerning the standards "set forth in the Charter of the Organization of American States, and amended by the Protocol of Buenos Aires." In fact, in its advisory opinion regarding the scope of the American Declaration, the Court noted that "the Member States have understood that the American Declaration" of the Rights and Duties of Man "contains and defines the basic human rights that the Charter refers to, and therefore the Charter of the Organization cannot be interpreted nor applied in human rights matters without integrating its standards with the corresponding provisions in the Declaration."[1] With regard to the instant case, the American Declaration contains standards regarding the right to health and the right to social security.[2]

339. In addition, the American Declaration states in Article XI the right of everyone "to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources." Article 45 of the OAS Charter requires member states "to dedicate every effort to [...] [d]evelopment of an efficient social security policy." Likewise, Article XVI of the American Declaration states that "every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living."

340. On the other hand, the Court has referred to the various obligations derived from these rights within the framework of the American Convention. In this regard, the Court has specified various aspects of the notions of progressive realization and non-regression in

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[1] *Interpretation of the American Declaration of the Rights and Duties of Man* within the framework of Article 64 of the *American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 39.

[2] Article 34 i) of the OAS Charter, which includes within the goals to achieve the integral development "(p)rotection of man's potential through the extension and application of modern medical science."

social rights matters.[3] Furthermore, the Court has interpreted and stated that, besides regulating the progressive development of these rights, a systematic interpretation of the American Convention requires an understanding that the obligations of respect and guarantee are applied also to economic, social, and cultural rights. In fact, the Court has stated that this article, "while it is under chapter III of the Convention," it is also part of Part I of the instrument, and intituled "State Obligations and Rights Protected," and therefore, it is subject to the general obligations contained in articles 1.1 and 2.[4] In this regard, the obligation established in article 26 functions as a special standard in relation to the general standard enshrined in article 2 in regard to the adoption of domestic legal measures.

341. In the instant case, there are laws and regulations by which the access to various benefits has been established in relation to the right to health and the right to social security. However, the parties argued about the alleged obstacles to the access of the benefits aforementioned. In this regard, in my opinion, the issue is not a discussion about the progressive realization or regression of these rights, but instead about the duty to guarantee them. Therefore, it would be useful to use the sources which allow for the interpretation of the content of the obligation to guarantee the right to health and the right to social security. Generally, these sources specify the manner in which the State must guarantee the effective use of social rights and the obligation to adopt measures to remove any possible obstacles against the enjoyment of the said rights.[5]

342. To determine these sources, one needs to apply the *pro persona* principle and bear in mind that, according to the content of article 29.b of the Pact of San Jose, the provisions of the American Convention cannot be interpreted in a way which "restricts the enjoyment or the exercise of the rights recognized in other conventions to which the States are parties."[6] Consequently, for the purpose of providing content to both rights, it is necessary to refer to treaties such as the Protocol of San Salvador, the International Covenant on Economic, Social, and Cultural Rights,[7] and those specified by the entity in charge of its interpretation, the Committee on Economic, Social, and Cultural Rights.

343. Considering that the Protocol of San Salvador could be used for the interpretation of the scope of the provisions of the American Convention, it is, in my opinion, necessary to establish some specifics. Although the Protocol of San Salvador establishes that among the social rights it enshrines, only the right to education and some labor union rights will be justiciable (article 19), this Protocol did not establish any provision aimed at limiting the scope of the American Convention. Consequently, when interpreting the Convention one must carry out a systematic interpretation of both treaties, taking into account their purpose. Moreover, the Vienna Convention demands an interpretation in good faith of the terms of article 26, as was previously done to determine the scope of the textual referral performed on the article before mentioned as to the Charter of the OAS and its relation to articles 1.1 and 2 of the Convention. This interpretation in good faith requires the

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[3] I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2009. Series C No. 198.

[4] I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru, supra.*

[5] This is the general scope of the duty of guarantee of all human rights. I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4

[6] I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 52.

[7] Approved by Argentina by Law 23.313, ratified on August 8, 1986.

recognisition that the American Convention did not establish distinctions when pointing out that its jurisdiction covers all the rights established between articles 3 and 26 of the Convention. Furthermore, article 4 of the Protocol of San Salvador establishes that any right recognized or in force in a State by reason of internal law or by virtue of international instruments, can be restricted or curtailed by virtue a pretext that the Protocol afore-mentioned does not recognize the right or recognizes it to a lesser degree. Finally, the Vienna Convention states that an interpretation should not lead to a manifestly absurd or unreasonable result. In this regard, the conclusion that the Protocol of San Salvador limits the scope of the Convention, would lead to the absurd consideration that the American Convention can have some effects among the Participating States of the San Salvador Protocol while having another effect for the States that are not parties to the said Protocol.[8]

344. I would also like to stress that it is necessary that the Court, as the authorized interpreter of the Convention, up-dates the normative sense of article 26. In my opinion, what matters is not the subjective intention of the State´s delegates at the time of the San José´s Conference or during the discussion of the Protocol of San Salvador, but the objective intention in the text of the American Convention, taking into account that the duty of the interpreter is to update the normative meaning of the international instrument. In addition, using a historical interpretation, based on the hypothetical intention that it would have been about the Convention from the delegates which adopted the Protocol of San Salvador, cannot discredit the explicit content of the American Convention.

345. On the other hand, the Vienna Convention's rules of interpretation are also subject to interpretation. The "intention of the State" is an aspect that is subject to interpretation. Hence the importance of harmonizing the rule of the "ordinary meaning" with the other rules relating to the context and the object and purpose of the treaty, and also the *travaux preparatoires*. In the *Cotton Field case*, the Court developed a more comprehensive concept of the means of interpretation considered in the Vienna Convention.[9] This is extremely important taking into account that it is necessary to interpret a convention, such as the American Convention, which has now been in force for more than 40 years, and a protocol, such as the Protocol of San Salvador, adopted more than 20 years ago, so as to give full effect to the rights contained therein.

346. In the instant case, as mentioned above, it could be implied that even though the State referred to the existence of legislation and policies that could have permitted Sebastián Furlan to gain access to social security schemes and free public health services, there is no information of the regulations and specific evidence which disproves the problems of accessibility faced by Sebastian Furlan, and, neither bearing in mind the behavior of Danilo Furlan considered as unreasonable on those occasions when he and his family did not appear before the health authorities. It is clearly understood that several obligations of the State, established by the international law and also in the domestic sphere, were assumed, in a disproportionate manner, by the family group of Sebastián Furlan, whose members did not have sufficient economic resources to deal with the mental disability of the victim.

347. The omissions and deficiencies in the medical care provided by hospitals and the lack of more guidance by the different state institutions involved in this case, particularly at the beginning, after the accident, hindered the access to social security benefits and to a

[8] Only 15 states have ratified the Protocol of San Salvador. Source: http://www.cidh.oas.org/Basicos/basicos4.htm

[9] I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 16, 2009. Series C No. 205.

timely, real, permanent, comprehensive and properly supervised treatment which would have prevented or diminished the deteriorating situation of the physical and mental health of Sebastián Furlan. These obstacles are somehow related to the obvious situation of vulnerability of Sebastián Furlan at that time, which resulted in his two suicide attempts and his act of aggression against his grandmother.

348. Moreover, these omissions and deficiencies limited the possibility for him to obtain rehabilitation interventions, which would probably have lead to more positive attitudes being nurtured in Sebastián Furlan regarding his disability, his achievement of the highest possible degree of integration, autonomy and the strengthening of his capacities with positive traits to his personality. Moreover, some of the welfare plans on which the State based its defense were to be provided at institutions at significant distances from the residence of the Furlan family, which demonstrated the serious problems of the accessibility and to the availability of the treatments considered necessary in his situation.

349. Despite the fact that Sebastián Furlan could have gained access to a health plan and social security with different related benefits, such access did not occur within a reasonable time after the accident. This was in part due to the lack of support from the Juvenile Defender's Office and because he was not, at the appropriate time, awarded compensation which would have contributed to the provision of the comprehensive care that was required.

350. Finally, in the present case, the consequences of the violations committed in relation to the right to health and the right to social security had a negative effect on the physical, emotional and mental integrity of Sebastián Furlan. In addition, these violations are explained by the lack of a greater diligence regarding the adoption of special protective measures required by the principle of non-discrimination in these type of cases. Consequently, in my opinion, it could be said that the State violated article 26 in relation to articles 5 and 1.1 of the American Convention to the detriment of Sebastián Furlan.

Margarette May Macaulay
Judge

Pablo Saavedra Alessandri
Secretary