REPORT No. 111/10
CASE 12.539
MERITS
SEBASTIAN CLAUS FURLAN AND NEXT OF KIN
ARGENTINA
October 21, 2010

II. SUMMARY

1. Mr. Danilo Furlan (hereinafter "the petitioner" or "Danilo Furlan") lodged a petition against the State of Argentina (hereinafter "the State", "the Argentine State" or "Argentina") on behalf of his son Sebastian Claus Furlan (hereinafter "the alleged victim" or "Sebastian"). It is alleged in the petition, which was filed at the OAS office in Argentina on July 18, 2001, that the State violated the human rights of Sebastian and his family resulting from a delay of more than 13 years in paying him compensation for damages stemming from the accident sustained by Sebastian when he was 14 years old, when a crossbeam which he hung from fell on his head causing him irreversible brain injuries. The accident occurred in an abandoned training field belonging to the Argentine Army.

2. The petitioner further contends that the court-ordered damage award was not enough to cover the expenses associated with Sebastian's recovery and to make sure that he has enough to live on, in light of his permanent limitations resulting from the accident, which render him unable to hold a steady job. Lastly, the petitioner argues that the State was tardy in paying the damages, in addition to which payment was made in bonds, which led to a significant decrease in the amount of the reparation given.

3. The State concurs with the petitioner as to the sequence of the main events pertaining to the accident, the seriousness of the injuries sustained by the alleged victim and the objective division of responsibility established by the court (70% of State responsibility due to the state and the conditions of the abandoned field and 30% of responsibility of the victim). Notwithstanding, the State alleges that the delay in the course of the civil damages proceedings cannot be attributed to the State; inasmuch as such delay was due to negligence on the part of the petitioner's attorney. The State further claims that it did not violate the right to judicial protection by paying the petitioner compensation in the form of bonds, while arguing that the means of execution of domestic judgments falls outside of the scope of protection of the American Convention. The State also contends that consideration of the alleged insufficiency of the amount of the award falls outside the competence of the Inter-American Commission on Human Rights (hereinafter "the Commission", "the Inter-American Commission" or "the IACHR"). Lastly, it argues that it did not violate the right set forth in Article 19 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), inasmuch as the mere fact that Sebastian was a minor at the time of the accident does not imply a violation of the rights of the child established in said provision.

4. In this report, the IACHR concludes that the Argentine State is responsible for violation of the right to be heard within a reasonable time (Article 8.1), the right to judicial protection (Article 25, sections 1 and 2.c), the right to personal integrity (Article 5.1), the rights of the child (Article 19) in conjunction with the general obligation to ensure human rights (Article 1.1) of the American Convention to the detriment of Sebastian Claus Furlan. With regard to his next of kin, the IACHR concludes that the Argentine State violated the right to personal integrity (Article 5.1) of his father (Danilo Furlan), his mother (Susana Fernandez), his brother (Claudio Erwin Furlan) and his sister (Sabina Eva Furlan); as well as the right to be heard within a reasonable time (Article

8.1) and the right to effective judicial protection (Article 25.1) to the detriment of Sebastian's father, Danilo Furlan; all of these rights enshrined in the American Convention.

5. Based on the foregoing, the IACHR recommends in this report that the Argentine State (i) provide full reparation to Sebastian Claus Furlan and his family for the violations of the human rights established in this report, taking into account the consequences caused by the unwarranted delay in the judicial proceedings, and that such reparation be effective taking into account the fact that Sebastian suffers a permanent disability (ii) ensure that Sebastian has access to medical and other types of treatment at specialized and quality treatment centers, or the means to gain access to said care at private centers; and (iii) as a measure of non repetition, take the necessary actions to make sure that law suits against the State for damages relating to the right to personal integrity of children comply with due process of law and judicial protection, particularly, the right to be heard within a reasonable time. Lastly, the IACHR agrees to forward this report to the Argentine State and grant a period of two months for it to implement the recommendations set forth therein. This period shall be counted from the date on which this report is forwarded to the State. The Commission also agrees to notify the petitioner of approval of this report pursuant to Article 50 of the Convention.

III. IACHR MEETING WITH THE STATE AND THE PETITIONER

6. On December 13, 2004, a meeting was held at the Ministry of Foreign Relations of Argentina, attended by the petitioner, several representatives of the State and the IACHR delegation, headed by then Commissioner Florentin Melendez, at which the parties engaged in discussions regarding the treatment required for Sebastian's recovery.[1] As follow-up to said meeting, the IACHR sent a letter to the State stressing the importance of "access to psychological treatment in the Central Military Hospital, which the petitioner had requested for Sebastian and other family members."[2] The petitioner discontinued the treatment provided at the Central Military Hospital shortly thereafter.[3] Consequently, the petitioner requested psychological treatment at an alternative facility, to which the Ministry of Defense responded that the National Commission of Social Assistance of the Ministry of Social Development advised the petitioner to go to the personalized care center closest to his home.[4]

IV. PROCESSING SUBSEQUENT TO REPORT No. 17/06

7. On March 2, 2006, the IACHR approved Report No. 17/06, declaring Case 12.539 admissible as to the alleged violations of the rights enshrined in Articles 8, 19, 25 of the American Convention in conjunction with the general obligation to respect and ensure rights as provided by Article 1.1 of said treaty. In a communication on June 13, 2006, the Commission forwarded the report to the petitioner and the State, setting a period of two months for the parties to submit

---

[1] Letter of the IACHR dated December 16, 2004.

[2] Letter of the IACHR dated December 16, 2004.

[3] Communication from the Director General of Legal Affairs of the Ministry of Defense, addressed to the Under Secretariat for Coordination of said ministry, dated May 11, 2006. Annex to communication from the petitioner received on July 12, 2006. With regard to this point, the petitioner explains the three reasons which led him to discontinue the treatment offered at the Central Military Hospital: 1) the treatment that he received from the doctor was not, according to the petitioner "warm", and that, as a result, he felt like he was being interrogated by the doctor; 2) his son Sebastian did not want "any more doctors or hospitals or confinement or medications;" and 3) the long distance between the location of the Central Military Hospital and the home of his ex-wife and his youngest son, Claudio. Communication from Mr. Danilo Furlan addressed to the Under Secretary of Technical Military Matters, dated January 14, 2005, "Photocopy No. 2", identified with number VII. Annex to Communication from the petitioner dated January 21, 2005, received at on February 1, 2005.

[4] Communication dated July 6, 2006 from the Under Secretariat for Coordination of the Ministry of Defense, addressed to Mr. Danilo Furlan. Annex to communication from the petitioner received on July 12, 2006.

additional remarks on the merits. On said occasion, the IACHR also made itself available to the parties in order to reach a friendly settlement in the case in accordance with Article 48.1.f of the American Convention.

8. The IACHR received additional information from the petitioner on the following dates: July 12 and 14, August 11 and 14 and December 26, 2006, January 10, March 21, April 10, July 18, August 3, 7 and 29, September 18, October 24, November 12 and December 18, 2007, January 22, February 21, March 3, April 7, May 22, June 19, July 18, August 6, October 6, and December 3, 2008, March 12 and 31, August 31 and September 8, 2009 and July 21, 2010. Copies of said communications were duly forwarded to the State.

9. The IACHR received observations from the State on the following dates: August 25, October 15, November 5 and December 17, 2008, February 23 and October 15, 2009. Copies of said communications were duly forwarded to the petitioner.

10. In a communication on July 17, 2008, the IACHR requested a copy of the court case file from the State, which it forwarded in a note on October 15, 2008. In a communication on May 3, 2010, the IACHR requested additional information from both parties. The petitioner responded to this request in a communication received on June 3, 2010. In a communication received on June 11, 2010, the State requested an extension to submit said information, which was granted by the IACHR.

V. POSITION OF THE PARTIES

A. Position of the Petitioner

11. The petitioner alleges that on December 21, 1988, his 14-year-old son Sebastian Furlan went with other boys to play in an abandoned military training field in the area where he resided in Ciudadela, Province of Buenos Aires. On said occasion, Sebastian hung from a 45 to 50 kilogram crossbeam, which broke off and fell on his head, fracturing his skull and knocking him unconscious. He claims that the boy was taken to the hospital where he was diagnosed with cranial trauma, a fractured temporal bone, blood loss through the nostrils, and consequently underwent an operation. Following the operation, he remained in a coma until January 3, 1989, and was released on January 23, 1989.

12. On December 18, 1990, the petitioner filed for damages before Court No. 9, Clerk's Office No. 28, in the case titled *'Furlan, Sebastian v National State for damages*.' The judgment of the trial court, issued on September 7, 2000, ascribed 30% of the responsibility to Sebastian and 70% of the responsibility to the State. Finding the claim admissible, it ordered the State to pay 130,000 pesos as damages, and all court costs and attorneys fees. The judgment was appealed by both parties, and was upheld by the court of appeals —Civil and Commercial Chamber No. 1 of the National Chamber of Appeals for Civil and Commercial Matters— on November 23, 2000, with regard to the main issue, but modifying it in relation to the court costs and attorneys fees, and dividing them in proportion with the responsibility ascribed in the decision. Accordingly, the appeals court ruled that the State was responsible for 70% and the petitioner for 30% of court costs and legal fees.

13. The petitioner notes that the proceedings took 10 years for the judgment to be handed down and 13 years until compensation could be collected. He notes that even though the judgment ordered the State to pay in pesos, it was paid out in bonds. He further claims that when the trial court judgment was issued in 2000, the peso was valued at a rate of one dollar to one peso, but following the economic crisis in late 2001, the peso underwent devaluation. He asserts that the court awarded damages for 165,063 pesos and that after attorneys' fees were paid, the

total amount remaining was 116,063 pesos, which was paid with Consolidated Bonds in National Currency Fourth Series 2%, set to be redeemed for their full value in 2016. He argues that he could not wait until 2016 to redeem the bonds for their full value; because of the economic situation he faced, the debts associated with Sebastian's recovery and care, and the fact that he was supposed to pay his share of attorneys' fees. Thus, he argues that he redeemed the bonds in 2003 at a much lower value than their nominal value at maturity. According to the petitioner's calculations, this meant that the bonds were redeemed at only 33% of their nominal value and that of the 116,063 pesos awarded in bonds, he received only 35,000 Argentine pesos (approximately US$ 11,000). Consequently, the petitioner contends that the damages amount that was awarded in his son's case has been inadequate to cover Sebastian's expenses, particularly taking into account the permanent physical and psychological effects of the accident on him and his consequent inability to hold a regular job.

14. Additionally, the petitioner attaches press clippings about amounts awarded in other civil damages cases in which the State was ordered to pay for situations that the petitioner deems less serious than that of his son's, thereby arguing that these awards have comparatively been much higher than the judicial award given to his son. The petitioner further claims "in my son's case the judgment and execution thereof should have been even more urgent, being that Sebastian (thank God) is alive and ever since the first day of his accident he has needed and will need financial aid at least for the rest of his life, for it to be as decent as possible (in fact he could have achieved a greater and better recovery, if we had received a quick economic response 14 years ago, without so much economic pressure, our family relationship would have been different)."

15. The petitioner contends that the State violated human rights in this case and bears responsibility, not only for negligence with regard to the abandoned military facilities that caused the accident, but also for the excessive delay in the judicial proceedings and in the execution of judgment, which deprived Sebastian of the necessary means for an adequate recovery. The petitioner specifically alleges that the State took an undue amount of time to acknowledge ownership of the military facilities where his son had the accident. According to the petitioner, the assistance and treatment required by Sebastian for his physical and mental rehabilitation as a result of the complexity and gravity of the case should have been urgent, it should have included the immediate family members and the State should have contributed with funds and institutions. In his own words, the petitioner contends that "after the almost 15 years that the State has taken to give us a miserable, humiliating and shameful compensation, as I see it, nothing could be done, what treatment could be given after 15 years? What can be recovered after 15 years?"

16. He claims that the accident caused irreversible brain damage to Sebastian at 14 years of age, changing his life forever. He notes that prior to the accident, Sebastian was a good student and was good at sports, but because of the accident, he had to learn to walk again and that he suffers from cognitive disability preventing him from effectively studying or holding a regular job. In his arguments regarding the evidence introduced in the context of the domestic court proceedings, the petitioner alleges that "proof has been given of the plaintiff's significant and irreversible injuries and disability, as well as that prior to the accident he was a boy who took part (as any other child did) in all school activities such as sports, and that after the accident he could not take part in them as he did before." As for his activities, he asserts: "before the accident the plaintiff studied and practiced sports (...) and that after the accident he could not do so at all." As to the injuries and psychological and physical damage, he alleges that Sebastian has (i) a 40% degree of psychological disability and requires psychological treatment; and (ii) a 70% degree of irreversible physical disability and needs to undergo physio-kinesiologic therapy.

17. The petitioner files several medical reports to confirm Sebastian's psychological status, describing it as a situation of cerebral involution associated with injuries, which occurred during the accident. As explained in the petitioner's own words, his son "has chronic distraction

and clumsiness in addition to a lack of judgment and common sense about things, to solve situations because of his physical-mental limitations, making it impossible for him to perform any job that has a minimum degree of responsibility." The petitioner mentions, among other problems, that the way his son acts has lead to frequent misinterpretation of his actions, and that he is regarded as suspicious wherever he goes, since because of the way he walks and talks people think he is on drugs or drunk. For example, the petitioner asserts that his son has been stopped several times by the police, and that he was assaulted in February 2003 which resulted in a trip to the hospital.

18. He further alleges that Sebastian's decreased cognitive ability and psychological and personality disorders, as a result of his brain injuries, have had serious consequences on the normal development of his personal and social relationships. The petitioner specifically files a copy of the case file of a criminal proceeding brought against Sebastian when he was 19 years old for beating his 84 year old grandmother, causing her multiple injuries on the face and fracturing her arm. The criminal case, which was heard before Court No. 5 for Criminal and Correctional Matters of the Province of Buenos Aires, stemming from charges of serious bodily harm filed on January 3, 1994 by Sebastian's uncle, was dismissed without prejudice on March 1 of the same year, based on his incompetence to intellectually grasp the potential illegality of his conduct and autonomously control his will, in accordance with Article 34(1) of the Criminal Code.

19. In light of the danger that Sebastian posed to himself and to others, the criminal court also ordered him to be admitted to a specialized facility for his safety and treatment, until he was no longer considered dangerous. After Sebastian and his immediate family underwent several medical evaluations, the judge ordered his release from the facility on May 19, 1994, and ordered Sebastian and his immediate family to continue psychiatric treatment. The petitioner contends that while Sebastian was held in the specialized facility, he was not given any treatment, but was instead kept medicated and chained to a bed.

20. In view of Sebastian's situation, the petitioner claims that he requested, to no avail on several occasions, that the State provide a disability pension or economic assistance to Sebastian, because he is unable to get a job that would allow him to support himself (particularly taking into account that Sebastian now has a partner, who according to the claims of the petitioner "also has problems" and two children, the youngest of which also has "developmental problems"). He notes that his son periodically sells perfumes, and that he only earns one fourth of what he needs to support his family. The petitioner alleges that when he requested a disability pension from the State, it was denied because Sebastian is 70% disabled, which does not meet the legal minimum requirement of 76% of disability to qualify for said benefit.

21. The petitioner contends that the consequences of the accident and the proceedings have been devastating for Sebastian's family, both economically and emotionally, not only because of the constant care that Sebastian's father had to provide during his recovery, but also because of the long-term effects of the accident on their daily lives, which remain until this day, at Sebastian's age (35). The petitioner affirms that the State had the means and resources required to adequately treat his son but did not do so, and consequently they had to "manage on their own" as best as they could at the public hospital. He further notes that the money obtained from the damages awarded were used to pay for accrued debts for the assistance and care required for Sebastian's recovery, including medical and psychiatric consultations, hospital stays, highly expensive medications, ophthalmologist visits (since he became cross-eyed from the accident), education in several schools, expenses associated with the assaults he was the victim of as a result of his condition, among others. In addition to the expenses he incurred, he claims that over the years he has had to devote himself exclusively to caring for Sebastian and, therefore, has had to stop working and thus ceased to earn any income. He adds that this has had devastating consequences for the family, such as the total disintegration of the family and the divorce of Sebastian's mother and father.

22. Based on the foregoing arguments, the petitioner requests the IACHR to declare the Argentine State responsible for violation of Sebastian's and his family's human rights in the case under examination.

B. Position of the State

23. The State concurs with the petitioner regarding the sequence of the principal events involved in the accident, the severity of the injuries sustained by Sebastian and the objective determination of responsibility as handed down by the domestic courts. It affirms its view that shared responsibility (70% State's responsibility and 30% Sebastian's responsibility) was appropriate, given that 14-year-old Sebastian was aware of the risks entailed in using unknown equipment on an abandoned property.

24. The State claims that even though the IACHR noted in its admissibility report that it was not competent to rule on the damages amount awarded, time and time again the petitioner argues before the IACHR that the amount is inadequate and it is disproportionate to the injuries sustained by his son. The State further contends that the only irregularity in the judicial proceedings being alleged by the petitioner is a delay caused by the courts. According to the State, the petitioner gives no reasons as to why the judicial proceedings had been protracted, as he just mentions, in general, that the State took a long time to recognize ownership of the land on which the accident occurred.

25. As for the delay, in citing case law of the Inter-American Court of Human Rights in the *Acosta Calderon* and *Yakye Axa Indigenous Communities* cases, the State contends that said court takes three elements into account to determine reasonability of length of time of a proceeding, which are: a) the complexity of the matter, b) the procedural activity of the interested party and c) the conduct of the judicial authorities. The State further argues that under the civil code and civil procedural code, the petitioner has the burden of driving the course of the proceedings, and that "for more than 5 years, [the case] was practically paralyzed by the procedural inactivity" of the petitioner's attorney. Thus it claims that the State is not responsible for the supposed delay in recognizing ownership of the property where the accident occurred. The State then goes on to describe the periods of procedural inactivity that occurred during these first years of the domestic proceedings.

26. Furthermore, the State contends that the petitioner filed the civil suit two years after the accident occurred and that the court immediately certified it to the Federal Public Prosecutor's Office to rule on the jurisdiction of the Federal Civil and Commercial Court in the case. Bearing in mind that the court is on holiday in January, the prosecutor ruled on February 11, 1991, that the court did have jurisdiction. The State claims that the petitioner's attorney did not file the actual brief of the complaint instituting the proceedings until two months after the initial suit, and that after that, one month passed before she [petitioner's attorney] requested the case to proceed.

27. The State claims that it cannot be responsible for undue delay in recognizing ownership of the land during those first five years, because it had not even been served notice of the filing of the complaint. It asserts that on November 14, 1991, the judge requested the plaintiff to specify who the complaint was directed against and, instead of responding to the request, the attorney asked for information to be requested from the Property Registry, "thus instituting a proceeding which, as a result of her own lack of expertise and procedural inactivity, was drawn out over more than five years." The State adds that the petitioner's attorney did not respond until February 22, 1996 that the suit was being filed against the Ministry of Defense. In said communication, the State also claims that in the response to the judge's request of November 14, 1991 "four months later, on March 13, 1992, Furlan's attorney said that the suit was against the

National Ministry of Defense," while requesting that an official letter be dispatched to the Property Registry.

28. The State claims that under domestic law, in this type of proceedings the plaintiff is responsible for writing up and serving notice of court-ordered official communications. It also points to several periods of procedural inactivity in the case, which can be attributed to the delay of the petitioner's attorney in writing up and serving notice of the letters. It then identifies (i) the judge's order of May 29, 1991 to issue a letter to the Army General Staff to report whether any investigation was opened regarding the alleged facts; while the letter was issued by the petitioner's attorney in September 1991; (ii) order of the judge dated March 18, 1992 to issue a letter to the Property Registry; while the letter was issued by the petitioner's attorney in June 1992; (iii) order of the judge from September 9, 1992 to issue a letter to the Provincial Office of Land Registry; and it was done in February 1993; and (iv) the judge's order to issue a new letter to the Property Registry on November 16, 1993; while the letter was prepared in March 1994 and picked-up from the court the following month.

29. The State claims that in addition to the delays of the petitioner's attorney in writing up and serving the aforementioned letters, there were other delays caused by a lack of procedural momentum of the plaintiff. It further contends that after April 1994, no additional steps were taken in the case file until February 1996, at which point the petitioner's attorney "reappears in the proceedings", filing a motion to discontinue the requests of information filed to the Property Registry, claiming that they had been unsuccessful without offering any proof to support such allegation.

30. The State alleges that "as of February 1996, the case proceedings took on a different pace," but that even so there were further delays which can be attributed to the plaintiff, among which the State points out: (i) notification of the suit to the Ministry of Defense was ordered on February 27, 1996 and carried out by the attorney almost three months later; (ii) the settlement hearing was scheduled for April 7, 1997, but was postponed at the request of the petitioner, who had claimed he was not served notice on time, which resulted in a new hearing date being set for one month later; (iii) on October 24, 1997, the court requested the parties to present the evidence, which the plaintiff did not respond to until three weeks later; and (iv) on December 18, 1997, the judge ruled on the admissibility of the requested evidence, but the plaintiff did not request the appointment of expert witnesses in the case until February 12, 1998. The State notes that the trial court judgment was rendered on September 7, 2000.

31. The State claims that, had the delays attributable to the plaintiff not taken place, the case would have taken a little more than three years for the trial court to hand down its judgment, which does not constitute a violation of the right to be heard within a reasonable time as established in Article 8.1 of the American Convention. Based on these arguments, it contends that there is no record of a single delay that can be attributed to the State in the record of the case proceedings, and that contrary to the arguments of the petitioner, at no time did it deny ownership of the land where the accident occurred. In fact, the State asserts that in the Ministry of Defense's response to the complaint filed by the petitioner in the domestic civil damages proceedings, it made no reference as to the ownership of the land. In conclusion, the State requests the IACHR to reject the arguments on the merits presented by the petitioner with regard to the rights set forth in Articles 8 and 25 of the American Convention.

32. With respect to the Commission's decision to declare the right to judicial protection set forth in Article 25(2)(c) admissible, the State first contends that the petitioner has not introduced any evidence supporting its arguments with respect to payment in bonds and the redemption thereof at a lower value. Additionally, it asserts that just as the petitioner alleges, it was his decision to redeem the bonds before the maturity date established by law and below the

nominal value, for which the State cannot be found responsible. It further claims that the IACHR is not competent to examine the petitioner's allegation pertaining to the form of payment of the damages awarded by the domestic court, in light of the reservation regarding Article 21 of the

American Convention made by Argentina at the time of ratification.[5] It contends that current domestic legislation establishes that execution of judgments rendered in cases where the State is the losing party with bonds is part of Argentine economic policy, which the IACHR is barred from examining. Lastly, the State argues that Article 25.2.c does not specify how court decisions are to be executed, and payment in bonds is not an obstacle in any way to said execution. In fact, it adds that all court judgments against the National State are executed in that same way.

33. With regard to Article 19 of the American Convention, the State argues that (i) the mere fact that Sebastian was a minor at the time of the accident does not mean that said provision has been violated; (ii) the petitioner does not submit in his original petition or in any subsequent submissions, any legal arguments of substance regarding the alleged violation of said right in detriment of Sebastian; (iii) in its admissibility report, the IACHR had referred in general terms to the special measures for the protection of children to which Sebastian was entitled as a result of the accident, and that said level of abstraction makes it impossible for the State to submit any arguments of substance on the subject, and pursue in a timely fashion its right to defense. Lastly, the State further claims that it must be recalled that Sebastian received comprehensive reparation for the damages he sustained and, based on the records in the court case file, Sebastian was treated on numerous occasions by public hospitals and no record appears of any complaint regarding the rights inherent to his condition as a child.

34. Without prejudice to the aforementioned arguments, the State notes that for humanitarian reasons and in the spirit of its traditional policy of cooperation with the bodies of the Inter-American System, it has put forth its best efforts to attempt to contribute to improve the plight that the petitioner claims to be suffering. It further indicates that on January 4, 2005, the Ministry of Defense instructed the Chief of the General Staff of the Army to take the necessary measures so that the Central Military Hospital "until it is determined which government agency shall be in charge of that responsibility, provide the health care recommended by the IACHR in the proceedings titled "FURLAN CASE." Moreover, it contends that it has provided the psychiatric assistance requested, but that it has been the petitioner himself who has discontinued the psychological treatment provided at the Military Hospital. Additionally, and without prejudice to the fact that the petitioner received compensatory damages, the State argues that it submitted to consideration of the authorities the request that he be given a disability pension, but that it was not possible because Sebastian did not fulfill the legal requirements. Notwithstanding the above, the State asserts that "it reaffirms its wish to provide the petitioner and his family with the care and treatment required to improve their situation in keeping with strictly humanitarian reasons."

35. Based on the above arguments, the State requests the IACHR to reject the arguments on the merits that have been presented by the petitioner in this case.

VI. PROVEN FACTS

A. Preliminary considerations regarding brain injuries and the importance of timely rehabilitation regarding children

[5] At the time of ratification of the American Convention, the Argentine State issued the following reservation:

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 tribunal. 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'."

36. A jointly released report by the World Health Organization and UNICEF in 2008 determined that head injuries are the most common accidents —and potentially the most dangerous— sustained by children throughout the world, and that many children who survive this type of injury suffer permanent disabilities that have a serious impact on their lives and the lives of their families. Said disabilities can be of a physical, mental or psychological nature, and can include the inability to attend school, find an adequate job or have a social life. Additionally, these children have more basic problems associated with the continuous pain they face. Said report also stresses that it is generally their closest family members, among others, who shoulder the responsibility of support for these young people or children.[6]

37. Said report also notes that many disabilities arising from child injury "could be avoided with improved rehabilitation services."[7] With regard to child injury (stemming from traffic accidents), the report indicates that "the availability of good rehabilitation services is [...] an important requirement for the proper recovery of [these injured] children."[8] Authoritative opinions also reflect that it is a proven fact that early rehabilitation in children and adolescents who have sustained traumatic brain injury (TBI) contributes to improving the functional outcome and, therefore, rehabilitation has to be continued beyond the post-acute stage; in order to promote neuronal reorganization, to monitor the child's development and to identify and manage new issues that may arise in relation to their growth, development and maturation.[9]

B. Sebastian Claus Furlan's accident

38. On December 21, 1988, Sebastian Claus Furlan, then 14 years of age,[10] together with other boys his age, entered a lot located in the town of Ciudadela, District of Tres de Febrero, Province of Buenos Aires, property of the Argentine Army, in order to play, without any restriction at all as they usually did.[11]

39. The trial court concluded that the evidence introduced in the suit for damages established with certainty that the property where Sebastian's accident occurred was:

> A former military training field (inside of which there were dirt mounds, hurdles and obstacles made of railroad ties of *quebrancho* wood and the remains of an "infantry track" [obstacle course]) that was in a state of disrepair, with one of its sides bordering a public street and was lacking in wire fencing or perimeter wall to prevent access to third parties, and which was used by children for playing different games, relaxing and practicing sports.[12]

---

[6] See World Health Organization and UNICEF, World Report on Child Injury Prevention, 2008, edited by Margie Peden et al, available at www.who.int, pp. 7-8.

[7] See World Health Organization and UNICEF, World Report on Child Injury Prevention, 2008, edited by Margie Peden et al, available at www.who.int, p.13.

[8] See World Health Organization and UNICEF, World Report on Child Injury Prevention, 2008, edited by Margie Peden et al, available at www.who.int, p. 41.

[9] Hwee-Ling Yen, Janice TY Wong, *Rehabilitation for Traumatic Brain Injury in Children and Adolescents*, commentary, Annals Academy of Medicine, January 2007, vol. 36. No. 1.

[10] Sebastian Claus Furlan's birth certificate indicates that he was born on June 6, 1974. Court records titled "Furlan Sebastian Claus v. National State for Damages", page 2. Annex to communication from the State received on October 15, 2008.

[11] Trial Court Judgment issued on September 7, 2000, National Court for Federal Civil and Commercial Matters, Chamber No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for Damages", page 321 back. Annex to communication from the State received on October 15, 2008.

[12] Trial Court Judgment issued on September 7, 2000, National Court for Federal Civil and Commercial Matters, Chamber No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for

40. Once he was on the premises, Sebastian attempted to hang from a cross stud or cross beam belonging to one of the obstacles, the consequence of which was that the approximately 45 to 50 kilogram beam fell on him hitting him hard in the head and instantaneously knocking him unconscious.[13] Sebastian was hospitalized in the Intensive Therapy unit of Professor Alejandro Posadas National Hospital (hereinafter the "Posadas National Hospital"), and diagnosed with encephalic cranial trauma with loss of consciousness, in a Grade II-III comatose state, with fractured right parietal bone.[14] He was admitted to the operating room to be operated on a right extradural hematoma with a fractured temporal bone; that is, the presence of bleeding between the bone and the external casing of the brain.[15] Following the operation, Sebastian remained in a Grade II coma until December 28, 1988 and then in a vigil coma until January 18, 1989.[16] While he was in intensive therapy, two encephalic computerized tomography scans were taken, which show cerebral and brain stem edema; additionally, electroencephalograms and evoked visual and brain stem potentials were performed, which show slowed reaction time.[17]

41. Once he regained consciousness on January 23, 1989, after 33 days of hospitalization, Sebastian was released from the Posadas National Hospital.[18] He was released from the hospital with difficulties in speaking and in the use of his upper and lower limbs,"[19] to receive outpatient treatment at a doctor's office "with a diagnosis that included cranial trauma, right temporal-parietal fracture, contusion of the brain and the mesencephalic stem,"[20] as well as neurological deficit."[21]

Damages", page 321 back. Annex to communication from the State received on October 15, 2008. Free translation by the IACHR.

[13] Trial Court Judgment issued on September 7, 2000, National Court for Federal Civil and Commercial Matters, Chamber No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for Damages", page 321. Annex to communication from the State received on October 15, 2008.

[14] Medical expert examination report prepared by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted in the case on November 15, 1999, page 266 back. Annex to communication from the State received on October 15, 2008.

[15] Expert Psychological examination report prepared by Dr. Luis Garzoni, court-appointed expert in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted in the case on illegible date and forwarded to the parties on March 5, 1999, page 243. Annex to communication from the State received on October 15, 2008.

[16] Expert Medical-Psychological examination report conducted by Dr. Luis Garzoni, court-appointed expert in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted in the case on an illegible date and forwarded to the parties by court order on March 5, 1999, page 243 back. Annex to communication from the State received on October 15, 2008.

[17] Medical expert examination report prepared by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted during the case on November 15, 1999, page 266 back. Annex to communication from the State received on October 15, 2008.

[18] Medical expert examination report prepared by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted during the case on November 15, 1999; and summary of the Clinical History of December 21, 1988 to January 23, 1989, prepared by Dr. Lidia C. Albano, Chief of Children's Intensive Therapy. Case proceeding records titled "Furlan Sebastian Claus v National State for Damages", page 13 back and p. 266. Annex to communication from the State received on October 15, 2008.

[19] Trial Court Judgment issued on September 7, 2000, National Court for Federal Civil and Commercial Matters, Chamber No. 9, Clerk's Office No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for Damages", page 320 back. Annex to communication from the State received on October 15, 2008.

[20] Expert Medical-Psychological examination report prepared by Dr. Luis Garzoni, court-appointed expert in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted in the case on an illegible date and forwarded to the parties by court order on March 5, 1999, page 243 back. Communication of the State received on October 15, 2008.

[21] Case proceeding records titled "Furlan Sebastian Claus v National State for Damages", page 148 back. Annex to communication from the State received on October 15, 2008.

C. Effects of the accident on Sebastian Claus Furlan

42. The accident and the consequent comatose state led to irreversible aftereffects on Sebastian. These sequelae, corroborated by the different examinations performed on him, indicate that Sebastian is suffering 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 the domestic law.[22] As a result of the accident, Sebastian has "an organic post-traumatic disorder and an abnormal neurotic reaction with obsessive compulsive manifestation (with personality deterioration), which entails a significant degree of mental disability."[23]

43. The medical report notes that Sebastian sustained primary injuries, such as cerebral contusion and diffuse axonal injury, as well as secondary injuries, which include diffuse cerebral edema.[24] The medical report further states that (i) comatose states lasting more than 10 days have a very high morbidity-mortality rate, causing very significant effects on memory, attention, ability to concentrate, social behavior and motor disorders; and this situation is exacerbated when there is injury to the brain stem; (ii) when there is diffuse injury to the white matter, such as axonal injury, the aftereffects can be severe and progressive, sometimes with multiple motor disorders of varying degrees of seriousness; and (iii) cerebral edema is one of the most dangerous complications that Sebastian has, for which the mortality rate is 50%.[25]

44. After Sebastian attempted suicide at age 15, he was readmitted to Posadas National Hospital on August 31, 1989, and was diagnosed with "multiple trauma with loss of consciousness,"[26] remaining in the hospital for observation due to "sever adolescent depression."[27] With regard to the physical examination performed on that occasion, it was observed that Sebastian presented (i) speech alterations, (ii) paraparesia,[28] (iii) dizziness as indicated by him, (iv) excoriations on parts of his body (face, arms, legs) as a result of the fall.[29] In the clinical description of his situation, it was noted:

---

[22] Medical expert examination report prepared by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted during the case on November 15, 1999, page 268 back. Annex to communication from the State received on October 15, 2008.

[23] Trial Court Judgment issued on September 7, 2000, National Court for Federal Civil and Commercial Matters, Chamber No. 9, Clerk's Office No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for Damages", page 325. Annex to communication from the State received on October 15, 2008. Free translation by the IACHR.

[24] Medical expert examination report prepared by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted during the case on November 15, 1999, page 269. Annex to communication from the State received on October 15, 2008.

[25] Medical expert examination report prepared by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted during the case on November 15, 1999, pages 269 and back. Annex to communication from the State received on October 15, 2008.

[26] Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 151. Annex to communication of the State received on October 15, 2008.

[27] Request for Inter-consultation and Supplemental Examinations, Clinical Examination at the Psychiatric Service for attempted suicide, Sebastian Furlan, H.C. No. 511295, "Professor Alejandro Posadas" National Hospital, Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 155. Annex to communication from the State received on October 15, 2008.

[28] Based on a search conducted by the IACHR, the term *paraparesia* refers to loss of strength, without reaching the level of paralysis, of the lower limbs, or a type of slight paralysis. Definition found at Dictionary Babylon, medical section, available on Internet.

[29] Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 152. Annex to communication from the State received on October 15, 2008.

> 15-year-old male child, who for several days presents weeping fits, does not want to go to school, says that it is useless and also has thoughts of suicide[.] On that date during the daytime he leaves his house he enters a building and jumps off the 2nd floor presenting momentary loss of consciousness. Consequently, he is placed on watch in this hospital lucid and hemodynamically stable[30] with the decision being made to hospitalize him for oversight at clinic[.] Cranial X-ray performed normal. Personal background information[.] See previous HCL.[31]

45. It was also noted at this time that it was Sebastian's second suicide attempt and, as for the victim's father "insists blamefully that he [Danilo Furlan] has been very demanding toward his son about his rehabilitation and that it is such insistence has been the cause of what has happened to Sebastian."[32]

46. Sebastian was a fair student, who in 1988 was in his first year at E.N.E.T. [National Technical Education School] No. 1 of Ciudadela when the accident occurred. The following May he returned to school "with serious deficiencies"[33]. Prior to the accident, he also attended the Private Oriental Institute (Shinkai Karate-Do School), and took part in sports activities at the Ciudadela Norte Club, in both basketball and swimming; however, as a result of the accident, he was forced to stop all sports activities, which was greatly upsetting to him.[34]

47. On February 3, 1994, when Sebastian was 19 years of age, his uncle filed charges against him at the Police Station for beating his 84-year-old grandmother. According to the complaint, on December 18, 1993 Sebastian had gone to her house and "without uttering a word punched her [his grandmother] in the face and then continued hitting her,"[35] causing multiple injuries on her face and fracturing her right arm, for which she was hospitalized from December 18 to 23, 1993.[36] In light of the strong evidence that Sebastian had committed the "crime of serious bodily harm", the judge ordered his preventive detention on February 21, 1994.[37]

---

[30] Based on a search conducted by the IACHR, when a person is deemed *hemodynamically stable*, it means no alterations of the heart are observed.

[31] Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 151. Annex to communication from the State received on October 15, 2008. For the purposes of the present report, in reproducing the verbatim quote, spelling errors of written accents were omitted that were present in the original; this does not, however, entail any alteration of the substance or content of the quote. Free translation by the IACHR.

[32] Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 155. Annex to communication from the State received on October 15, 2008. Free translation by the IACHR.

[33] Fact alleged by the petitioner and not disputed by the State. Nor is there any convincing evidence on record in the case file that would allow one to arrive at a different conclusion. Written complaint, submitted in the case on April 16, 1991, Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 15 back and 16. Annex to communication from the State received on October 15, 2008. Also see Reports and Evaluations Bulletin of Sebastian Furlan, Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 11 and page 11 back. Annex to communication from the State received on October 15, 2008.

[34] Facts alleged by the petitioner and not disputed by the State. Neither is there any convincing evidence on record in the case file that would allow one to arrive at a different conclusion. Written complaint, submitted in the case on April 16, 1991, case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 15 back and 16. Annex to communication from the State received on October 15, 2008. Also see Certificate of Diploma of 6th Grad Kyu, Karate-do, issued on August 30, 1987 to Sebastian Furlan, case proceedings file titled "Furlan Sebastian Claus v. National State for Damages", page 12 and page 12 back. Annex to communication from the State received on October 15, 2008.

[35] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 1. Annex to communication from the petitioner dated April 1, 2008. Free translation by the IACHR.

[36] Clinical record of Virginia Minetti, admitted to "Our Lady of Mercy" Private Hospital on December 18, 1993. Case No. 27.438/3861 against Sebastian Furlan for alleged serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 7. Annex to communication from the petitioner dated April 1, 2008.

[37] Case No. 27.438/3861 against Sebastian Furlan for alleged serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 13. Annex to communication from the petitioner dated April 1, 2008.

48. On February 28, 1994, a psychiatric exam was performed, during which Sebastian stated that he had auditory hallucinations and that he was undergoing psychiatric treatment, but that at the time he was not receiving any psychoactive drugs. With regard to the beating of his grandmother, Sebastian claimed that it was a "reflex"[38]. In the context of said case, Sebastian described his situation in his own words, as follows:

> As a result of the aggressiveness stemming from the accident, I assaulted my grandmother and consequently my uncle pressed charges, which gave rise to Case No. 27.438 brought before Dr. J.C. Sorondo of the Criminal Court No. 5 of the Judicial Department of San Martin.- I was sentenced there to three months at the Araoz Alfarao Institute, in 1993.-
> (...) For many periods of time, I lost self-control and carried out acts against all logic and morals, which was why members of the Police Department intervened, with records of the incidents kept at each Police Station involved. One of them, Police Station No. 35 of the Federal Capital, occurring in 1993 and the other (...) on October 17, 1993, at Police Station No. 45.[39]

49. The findings of said examination were that Sebastian presented a "mixed psychoorganic-dissociative psychiatric syndrome of sequelae" which makes him unable to discern the unlawful nature of his conduct and autonomously control his will.[40] Based on this medical opinion, the judge dismissed the case without prejudice on March 1, 1994, and taking into account "the danger to himself and to others," remanded him to police custody at the Evita de Lanus (formerly Araoz Alfaro) Hospital (hereinafter "Evita Hospital"), for his safety and treatment, until such time as the conditions of danger go away.[41]

50. On March 23, 1994, the forensic doctor reported to the court that in view of Sebastian's clinical status and that "he is psychiatrically cleared and adequately medicated," it would not be necessary to hold him under police custody at Evita Hospital. Consequently the police custody was removed on March 25, 1994.[42]

51. On April 6, 1994, the Evita Hospital forwarded a report on Sebastian's evolution and status, in which it informed the judge "thanks to the in-patient treatment provided, he is calmer, though his habitual bradypsychia and deviation of judgment, irreversible aftereffects from his past accident persist. He also appears dysthymic and eager to see his father."[43] The doctors entered into the record that Sebastian was being medicated with Bromazepan (6 mg.) and Etumina and

---

[38] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 29 and 29 back. Annex to communication from the petitioner dated April 1, 2008.

[39] Written brief "Complaint New Offenses", submitted by Sebastian Claus Furlan, acting on his own behalf. Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 77. Annex to communication from the State received on October 15, 2008. (For the purposes of the present report, in reproducing the verbatim quote, spelling errors of written accents were omitted that were present in the original; this, however, does not entail any alteration of the substance or content of the quote). Free translation by the IACHR.

[40] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 29 and 29 back. Annex to communication from the petitioner dated April 1, 2008.

[41] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), pages 30 and 31 back and 34. Annex to communication from the petitioner dated April 1, 2008.

[42] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), pages 54 and 56. Annex to communication from the petitioner dated April 1, 2008.

[43] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 61. Annex to communication from the petitioner dated April 1, 2008.

recommended adequate psychological treatment so he can decide on school and activities he wishes participate in.[44]

52. In the follow-up medical reports, after the patient was released, the petitioner informed the treating doctor that "after three months of being confined in the hospital, (Sebastian) is very fearful, at times he trembles, he is very scared and has nightmares; the confinement has made him regress from the progress that he had achieved before."[45] On October 4, 1994, the petitioner appeared before the court and stated that Sebastian "is totally recovered at this time, is attended every two weeks at the C.I.F. (*Centro de Integración Familiar*) [Family Integration Center], where he receives adequate treatment."[46]

53. On November 17, 1994, the forensic doctor reported to the court that Sebastian attended the full school year, studying industrial studies (third year) (performing poorly) and that he obtained his driver's permit and that he had not had any accidents; concluding that "even though he still has the psycho-organic basis of his illness, the lack of sensorial perception has disappeared", and therefore he may continue to receive outpatient treatment and periodical monitoring.[47] On December 22, 1994, the court decided to lift the security measures on Sebastian regarding treatment at the C.I.F [Family Integration Center].[48]

54. Sebastian studied his first year, second division at Technical Education School No. 4 in 1988 and then his second year, first division in 1990, through early May. The attorney for the plaintiff requested this school to report on his status of integration and academic performance before and after the accident of December of 1988, as evidence in the domestic suit for damages. The information provided by Technical Education School No. 4 in the context of the case confirms that Sebastian's behavior changed in a way that adversely affected his school performance. In response to the official letter of request, the school principal informed the judge the following: "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 and the others."[49]

55. The expert medical examination conducted in the context of the civil proceedings, the report of which was presented to the court on November 15, 1999, yielded the following conclusions as to how Sebastian was affected and the necessary medical care to treat him:

In response to the points of the expert examination, it could be said that:

---

[44] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 66. Annex to communication from the petitioner dated April 1, 2008. Free translation by the IACHR.

[45] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 126 back. Annex to communication from the petitioner dated April 1, 2008. Free translation by the IACHR.

[46] Case No. 27.438/3861 against Sebastian Furlan for alleged serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 141. Annex to communication from the petitioner dated April 1, 2008. Free translation by the IACHR.

[47] Case No. 27.438/3861 against Sebastian Furlan for alleged serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 151. Annex to communication from the petitioner dated April 1, 2008.

[48] Case No. 27.438/3861 against Sebastian Furlan for alleged serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), pages 168-169. Annex to communication from the petitioner dated April 1, 2008.

[49] Note No. 05/98 dated March 3, 1998, forwarded by Technical Education School No. 4, *Tres de Febrero*, Region V, to the court in the context of the suit for damages brought by the petitioner. Case proceeding file titled "Furlan Sebastian Claus v National State for Damages", page 109. Annex to communication from the State received on October 15, 2008. Free translation by the IACHR.

- The aftereffects that the plaintiff presents were caused by cranial encephalic trauma.
- They [the aftereffects] are of an irreversible nature, particularly the cognitive disorders. The motor disorders can be reduced through adequate physio-kinesiologic therapy.
- The medical treatment, the surgical procedures, the pre and post-operative therapeutic measures were adequate for someone with the clinical history presented by the plaintiff.
- The treatment should be predominantly psychiatric in order to medicate them (sic) with the necessary drugs to reduce anxiety, aggressiveness.
- Physio-kinesiologic therapy treatment should be given in order to re-teach him his motor skills with a frequency of two sessions per week and at a cost of 40 pesos per session.[50]

56. The expert clarified that the physio-kinesiologic therapy treatment should be given for at least a period of two years[51] (with a frequency of two sessions per week)[52]. The psychological expert further recommended that psychotherapy treatment should consist of three weekly sessions of individual and group psychotherapy at an estimated cost of thirty pesos per session "for however long it is required to obtain an improvement, which is estimated to be at least two years" [53].

D. Effects of the facts on Sebastian's family and family relationships

57. At Posadas National Hospital in June 1991 —when Sebastian was 16 years old— individual interviews were held with him and his father, the records of which show issues in family relations stemming from the accident. At that time, it was also noted that the accident entailed great suffering for the father, who as of the time of the accident "became fully responsible for his son, both for his physical rehabilitation and for the general oversight of his conduct."[54]

58. Regarding Sebastian's family relationships and the conduct of the members of his family (mother, father, brother and sister), the report of the medical-psychological experts carried out in the context of the civil suit for damages highlighted the following: (i) the disturbing and problematic relationship after the accident of Sebastian with his father, who has taken full responsibility for Sebastian; (ii) after the accident Sebastian's mother begins to work outside the home and her role in the home is performed by Sebastian; (iii) the reversal of roles in Sebastian's family (Sebastian takes the place of the mother as the object of control of the father, and the father

---

[50] Sebastian was 23 years old when he underwent this examination. The expert medical examination conducted by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted during the case on November 15, 1999, pages 269 and back. Annex. Communication of the State received on October 15, 2008. For the purposes of the present report, in reproducing the verbatim quote, spelling errors of written accents were omitted that were present in the original; this, however, does not entail any alteration of the substance or content of the quote. Free translation by the IACHR.

[51] Clarification of expert examination report submitted by Dr. Juan Carlos B. Brodsky, undated. Case proceedings record titled "Furlan Sebastian Claus v National State for Damages", page 274. Annex to communication from the State received on October 15, 2008.

[52] Sebastián was 23 years old when he underwent this examination. The expert medical examination conducted by Dr. Juan Carlos B. Brodsky, court-appointed expert neurologist in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted during the case on November 15, 1999, pages 269 back. Annex to communication from the State received on October 15, 2008.

[53] Expert Medical-Psychological examination report prepared by Dr. Luis Garzoni, court-appointed expert in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted in the case on an illegible date and forwarded to the parties in court order on March 5, 1999, page 246 back. Annex to communication from the State received on October 15, 2008.

[54] Case proceeding records titled "Furlan Sebastian Claus v National State for Damages", pages 215-216. Annex to communication from the State received on October 15, 2008.

takes the place of the wife, as caretaker of the children), created a highly conflictive relationship between Sebastian and his father, which led Sebastian to not recognize his thoughts and desires as his own, plunging him into a "state of confusion," which prevents him from grasping nuances in conduct demanded by society.[55]

59. The examination performed on March 17, 1994 on Sebastian's father established that he presents a "neurotic personality structure, with psychopathic traits of disharmonious actions in situations of increased amounts of environmental stress."[56] Based on said diagnosis, the court recommended that he be given outpatient psychiatric-psychotherapeutic treatment at the Posadas National Hospital, and that certification of his constant attendance be forwarded to the court.[57]

60. Prior to ruling on Sebastian's release from the hospital, in the context of the criminal case against him for serious bodily harm to his grandmother in 1994, the criminal court ordered that several interviews be conducted with Sebastian and his immediate family members at the C.I.F. On April 28, 1994, Sebastian (19), his father, Danilo Furlan (47), his mother, Susana Fernandez de Furlan (45), his sister, Sabina Furlan (18) and his brother, Claudio Furlan (14) went to the C.I.F. The conclusion drawn from these interviews was that "the family group is severely disturbed and the risk of violent action is high." [58]

61. Following several examinations and interviews, the judge ordered Sebastian's release from the hospital in a decision on May 18, 1994, and ordered the continuation of Sebastian's and that of his immediate family's psychiatric treatment at C.I.F. (requiring bimonthly reporting to the court on said treatment) following the recommendation that the Zone Office of Guardianship of the Mentally Disabled had made in the context of said court case.[59] The reports on said psychiatric treatment submitted for the following month noted that the immediate family attended the treatment and was improving with regard to family relationships; however, Sebastian and his father had dropped out of the treatment in July of that year, and were consequently directed by the court to continue with the treatment.[60]

---

[55] Expert Medical-Psychological examination report conducted by Dr. Luis Garzoni, court-appointed expert in the case proceeding records titled "Furlan Sebastian Claus v National State for Damages", submitted in the case on an illegible date and forwarded to the parties in court order on March 5, 1999, page 246, case proceeding records titled "Furlan Sebastian Claus v National State for Damages." Annex to communication from the State received on October 15, 2008.

[56] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 47. Annex to communication from the petitioner dated April 1, 2008. Free translation by the IACHR.

[57] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 48. Annex to communication from the petitioner dated April 1, 2008.

[58] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 104. Annex to communication from the petitioner dated April 1, 2008.

[59] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), page 111 and page 117 back. Annex to communication from the petitioner dated April 1, 2008.

[60] Case No. 27.438/3861 against Sebastian Furlan for serious bodily harm, Court for Criminal and Correctional Matters No. 5 (1994), pages 125-128. Annex to communication from the petitioner dated April 1, 2008.

E. Request for pension for Sebastian

62. In response to Danilo Furlan's request for a pension for his son due to his disability, the National Commission of Public Assistance of the Ministry of Social Development sent him a letter dated December 9, 2005, informing him about the minimal eligibility requirements that must be met in order to apply for non-contributory pensions. The requirements mentioned in the letter are: that the person must (i) be totally and permanently "disabled", which is presumed to mean that the "disability causes a decrease in (76%) or more in the ability to work; and (ii) "not have relatives that are legally obligated to provide support or, if the person has such relatives, that they are impaired from doing so."[61]

63. The petitioner further requests the Ministry of Defense for a pension similar to the one applicable to ex-combatants of the Falkland Islands war; the request was declared inadmissible by the State in July 2006, on the grounds that this type of pension is governed by special laws, which establish certain requirements that must be met and that are subject to mandatory verification.[62]

F. The civil suit for damages and payment of the judicial award in bonds

64. On December 18, 1990, assisted by counsel, Sebastian's father filed a civil complaint in order to claim compensation from the State for damages "stemming from the resulting disability of [his] son Sebastian, unearned wages, expected loss and moral injury [pain and suffering], from the accident."[63] On April 16, 1991, the petitioner submitted an addendum to complete the originally filed complaint, asking for compensation for (a) moral injury (encompassing physical and psychological suffering stemming from the accident); (b) the aftereffects from the brain injuries sustained, which will prevent him in the future from undertaking a college level career or even from completing secondary school; (c) the aftereffects due to physical injuries sustained, which prevent him and will prevent him in the future from having a normal social life; and (d) recurring brain and physical injuries, which manifest themselves as repeated headaches, memory loss and numbness in limbs.[64] The petitioner further requests the benefit of litigating at no expense, which was subsequently granted by the court.[65]

65. On December 24, 1990, the judge requested that the case proceedings file be sent to the Federal Prosecuting Attorney to rule on whether the court has jurisdiction to hear the case, to which the Prosecutor responded in an official letter on February 11, 1991, that based on the object thereof, the case would indeed be subject to the provisions set forth in Decrees 34/91 and 53/91,[66]

---

[61] Annex to communication from the petitioner received December 19, 2005.

[62] Communication dated July 6, 2006 from the Subsecretariat for Coordination of the Ministry of Defense, addressed to Mr. Danilo Furlan. Annex to communication from the petitioner received July 12, 2006.

[63] Complaint submitted on December 18, 1990, Case file titled "Furlan Sebastian Claus v. National State for Damages," page 6. Annex to communication from the State received on October 15, 2008.

[64] Addendum to complaint [*integración de demanda*] submitted on April 16, 1991. Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 16 back. Annex to communication from the State received on October 15, 2008.

[65] The IACHR is not certain of when said benefit was granted, because that issue is being heard in a separate proceeding from the main case. However, several letters from the court dated September 11 and 20, 2001 are in the record referring to said benefit. Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 389 and 396. Annex to communication from the State received on October 15, 2008.

[66] Case proceedings file titled "Furlan Sebastian Claus v National State Alleged Damages," pages 7 back and 8. Annex to communication from the State received on October 15, 2008.

relating to the temporary suspension (for a period of 120 days) of law suits and administrative claims against the National State and entities of the Public Sector.[67]

66. On April 19, 1991, the court certified that the civil complaint was admitted and on May 24 of that same year, the petitioner requested, as provided in Decree 383/91,[68] the case be ordered to proceed.[69] On May 29, the judge ordered the official letter to be issued to the General Staff of the Army so that it would report whether any investigation had been opened with regard to the facts.[70] On November 8, 1991, the petitioner requested the court to order that a copy of the complaint be served.[71]

67. On November 14, 1991, in light of the fact that the petitioner had noted in his initial complaint that the land where the accident had occurred belonged to the 101st Air Defense Artillery group,[72] and that in the pleading submitted to complete the complaint —filed on April 16, 1991— he had requested that an official letter be issued to the Property Registry for it to report who held ownership over the property on the date of the accident,[73] the judge asked the petitioner to state against whom was the suit being brought.[74] On March 13, 1992, the petitioner's attorney responded by asserting that the action was being brought against the National Ministry of Defense and, notwithstanding, asked for an official letter to be issued to the Property Registry "in order to learn who held ownership over the property where the accident occurred, on the date thereof, according to what is noted in Point II [of the addendum to the complaint] (information on the property)."[75]

68. On July 24, 1992, the Property Registry conveyed to the court that it was necessary to cite the street map where the property was located;[76] consequently, the petitioner requested on

---

[67] See Decree No. 34/91 *Temporary suspension of law suits and administrative claims against the national State and entities of the public sector* (B.O.[Official Bulletin] No. 27.047 January 8, 1991) and Decree No. 53/91 *Clarification of article 3 of Decree 1216/91* (B.O. 27.051 January 14, 1991).

[68] See Decree No. 383/91, amending Decrees 34/91 and 53/91 relating to the temporary suspension of law suits against the State, published in the Official Bulletin on March 12, 1991.

[69] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 18 back and 19. Annex to communication from the State received on October 15, 2008.

[70] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 19 back. Annex to communication from the State received on October 15, 2008.

[71] Case proceedings file titled "Furlan Sebastian Claus v National State Alleged Damages," page 21. Annex to communication from the State received on October 15, 2008.

[72] Complaint filed on December 18, 1990, Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 6. Annex to communication from the State received on October 15, 2008.

[73] Addendum to complaint [*integración de demanda*] submitted on April 16, 1991 Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 17. Annex to communication from the State received on October 15, 2008.

[74] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 22. Annex to communication from the State received on October 15, 2008.

[75] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 21 back. Annex to communication from the State received on October 15, 2008. "Point II" of the document, which is an addendum to the complaint [and] to which the petitioner refers, notes that his son Sebastian entered the "properties owned by the defendant, which are located in the District [*Partido*] Tres de Febrero, town of Ciudadela, Province of Buenos Aires, delimited by Hipolito Irigoyen, Carlos Pellegrini, Reconquista and Comesaña Streets (Land Register Nomenclature: District VI-Section D-Division XI-Parcels 1 and 2 squares 2795 and 28988, respectively." Addendum to complaint submitted on April 16, 1991 Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 15. Annex to communication from the State received on October 15, 2008. Free translation by the IACHR.

[76] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 25. Annex to communication from the State received on October 15, 2008.

September 4, 1992 that a letter be issued to the Office of Land Registry, so a copy of said maps would be forwarded.[77] The relevant land register inquiry was conducted from March to May of 1993.[78] In an official letter on May 6, 1993, the Office of Land Registry informed the court that (i) it was unable to provide the information requested about parcel 1; and (ii) with regard to parcel 2, it reports that the property belongs to the "Supreme Government of the Nation."[79] On November 10, 1003, the petitioner asked the court to issue a letter to the Registry of Property in order to provide information on who holds ownership of parcel 1,[80] which was ordered by the judge on November 16, 1993;[81] the original copy of which was delivered to the attorney of the plaintiff in order to serve notice of it on April 14, 1994.[82]

69. On February 22, 1996, the petitioner's attorney submitted a pleading requesting the following of the judge:

> I. In 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.
> II. 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 proves to be responsible for the acts that led to my son's injuries.
> III. I request that a copy of the complaint be served.[83]

70. On February 27, 1996, the court ordered that the complaint be served to the "Ministry of Defense – General Staff of the Army", which had a period of 60 days to respond to it.[84] The answer to the complaint (and to the objection to the prior motion to dismiss based on the statute of limitations [defense of prescription]) was presented by the Ministry of Defense in the case proceedings on September 3, 1996.[85] On October 8, 1996 the court directed said pleading to be

---

[77] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 26. Annex to communication from the State received on October 15, 2008.

[78] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 27-37. Annex to communication from the State received on October 15, 2008.

[79] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 34 and 36. Annex to communication from the State received on October 15, 2008.

[80] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 38. Annex to communication from the State received on October 15, 2008.

[81] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 38 back . Annex to communication from the State received on October 15, 2008.

[82] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 39 back. Annex to communication from the State received on October 15, 2008.

[83] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 40. Annex to communication from the State received on October 15, 2008 (for the purposes of the present report, in reproducing the verbatim quote, spelling errors of written accents were omitted that were present in the original; this does not, however, entail any alteration of the substance or content of the quote). Free translation by the IACHR.

[84] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 40 back. Annex to communication from the State received on October 15, 2008.

[85] Pleading submitted on September 3, 1996 by the judicial representative of the National State – General Staff of the Army titled "Object Prescription – Answer Complaint." Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 45-48 back. Annex to communication from the State received on October 15, 2008.

served on the petitioner;[86] who, in response, through his attorney submitted his remarks on October 16, 1996 on the answer to the complaint.[87]

71. The Office of Juvenile Assistance submitted a brief on October 29, 1996 indicating that since Sebastian had reached adult age at that time, it was not the responsibility of said entity to represent him.[88] Once an adult, Sebastian took part in the proceedings on his own behalf, on October 28, 1996, and endorsed all actions that had been taken by his father on his behalf until then.[89]

72. The court ruled that the action had not lapsed under the statute of limitations, rejecting the objection filed by the General Staff of the Army (hereinafter the "EMGE" or the "Staff of the Army") and set the petitioner's attorney's fees, in an order issued on November 1, 1996.[90] This decision was appealed by the representative of the EMGE on November 18, 1996.[91] On November 26 of the same year, the judge asked the State to provide a legal basis for its appeal; and on December 9, the EMGE asserted that it was appealing the decision based on the regulation of attorney's fees of the opposing party.[92] On December 12, 1996 the judge asked it whether it was appealing the fees because they were too high or too low.[93] On March 17, 1997, the court called on the EMGE to respond within a period of two days; also on that same day Sebastian's attorney submitted a motion asking the court to direct the EMGE to respond to the request of the judge from December 12 on the appeal of attorney's fees,[94] inasmuch as the failure to respond was prejudicial to the plaintiff.[95] The EMGE responded on March 24, 1997 that it was appealing the judgment of regulation of attorney's fees of the opposing party because they were too high.[96]

73. On March 17, 1997, the petitioner's attorney asked the court, based on the merits of the subject of the suit, to set a date for a settlement hearing in order to come to an agreement

---

[86] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 52. Annex to communication from the State received on October 15, 2008.

[87] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 54. Annex to communication from the State received on October 15, 2008.

[88] On said occasion as well, the Office of Juvenile Assistance accepted the representation of Sebastian's brother and sister because of their condition as minors. Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 55. Annex to communication from the State received on October 15, 2008.

[89] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 56. Annex to communication from the State received on October 15, 2008.

[90] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 58 and 58 back. Annex to communication from the State received on October 15, 2008.

[91] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 63. Annex to communication from the State received on October 15, 2008.

[92] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 64. Annex to communication from the State received on October 15, 2008.

[93] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 64 back. Annex to communication from the State received on October 15, 2008.

[94] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 65. Annex to communication from the State received on October 15, 2008.

[95] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 66. Annex to communication from the State received on October 15, 2008.

[96] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 68. Annex to communication from the State received on October 15, 2008.

with the Staff of the Army,[97] which was set for April 10, 1997.[98] Nonetheless, the petitioner requested a new date to be set due to the fact that it was impossible for him to be served on time. The new settlement date was set for May 8, 1997.[99] 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 sole authority with the respective power to do so. On said occasion, the EMGE's attorney clarified that he did not mean to signal thereby that the State or the EMGE was not "open to considering any type of proposal."[100] The court put on the record that on May 8, 1997 Sebastian and his attorney appeared at the settlement hearing, but there was no representative of the EMGE.[101]

74. On August 21, 1997, there was a change of counsel for the petitioner.[102] On July 14, 1997, the plaintiff introduced new facts in the record of the proceedings noting the assault on his grandmother and other acts of aggression "contrary to all logic and morals" that prompted the intervention of the police on several occasions,[103] to which the attorney of the EMGE objected to their admission.[104] In an order on September 26, 1997, the court decided to admit the new facts.[105] On October 21, 1997, Sebastian's attorney moved for the introduction of evidence to begin.[106] On October 24, the judge announced the taking of evidence in the proceedings for a period of 40 days, giving the parties 10 days for the introduction thereof.[107] On November 14, 1997, Sebastian's attorney introduced documentary evidence, evidence related to requests for information, expert evidence (requesting the appointment of two experts: one medical and one psychiatric expert), testimonial evidence; and on December 16, requested that the court to rule on the admissibility of such requested evidence.[108] On December 18, 1997 the court ruled on the evidence introduced by the plaintiff, setting August 19, 20 and 21, 1998 to hear the testimony of the witnesses that were

---

[97] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 66 back. Annex to communication from the State received on October 15, 2008.

[98] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 66 back and 67. Annex to communication from the State received on October 15, 2008.

[99] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 70 and 70 back. Annex to communication from the State received on October 15, 2008.

[100] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 72. Annex to communication from the State received on October 15, 2008.

[101] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 73. Annex to communication from the State received on October 15, 2008.

[102] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 83. Annex to communication from the State received on October 15, 2008.

[103] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 77. Annex to communication from the State received on October 15, 2008.

[104] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 86. Annex to communication from the State received on October 15, 2008.

[105] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 73. Annex to communication from the State received on October 15, 2008.

[106] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 90. Annex to communication from the State received on October 15, 2008.

[107] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 790 back. Annex to communication from the State received on October 15, 2008.

[108] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 96-98. Annex to communication from the State received on October 15, 2008.

called.[109] On February 12, 1998, the attorney requested appointment of the experts.[110] On February 17, they were appointed and on March 2 the expert witnesses appeared, accepting the appointment and taking their oath.[111]

75. On April 6, 1998, the Chief of Police Station 45 of the Argentine Federal Police, as requested of him by the court, forwarded a record of Sebastian's detention on October 17, 1993 from 16:40 until 21:20 hours at the police station in order to establish his identity.[112]

76. On August 19 and 20, 1998, the five witnesses called by the petitioner's attorney appeared, and on August 20, 1998, the petitioner's attorney waived testimony of the other three additional witnesses called by him in the case.[113] On December 1, 1998, the petitioner's attorney submitted a brief to the judge to report on the status of the medical examinations ordered in the context of the proceedings and requesting the judge to issue a new letter to the Government of the Autonomous City of Buenos Aires to conduct the court-ordered nuclear magnetic resonance.[114] On December 10, 1998, the petitioner's attorney requested that the psychology expert be subpoenaed to submit the expert report under warning of removal of appointment.[115]

77. On December 18, 1997, the court ruled on the evidence introduced by the EMGE, ordering the issuance of two letters requested by the defendant (including a letter to the Army to report whether there was a record relating to Sebastian) and noting the date of the cross-examination, thus ordering that Sebastian Furlan be subpoenaed to appear before it.[116] On February 12, 1998, the cross-examination hearing that had been called by the defendant took place, requesting that Sebastian Furlan be examined.[117] On November 12, 1998, the Chief of the General Archives of the Army informed the court that no record relating to Sebastian Claus Furlan appeared in the records of the different offices of the Army.[118] On December 23, 1999, the petitioner's attorney asked the court to find EMGE's right to cross-examine to be forfeited, in light of the fact that the plaintiff had appeared at the hearing set for this purpose, but that the EMGE had not.[119] On

---

[109] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 99. Annex to communication from the State received on October 15, 2008.

[110] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 100. Annex to communication from the State received on October 15, 2008.

[111] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 100 back and 105 back. Annex to communication from the State received on October 15, 2008.

[112] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 174. Annex to communication from the State received on October 15, 2008.

[113] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 197-202. Annex to communication from the State received on October 15, 2008.

[114] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 219. Annex to communication from the State received on October 15, 2008.

[115] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 221. Annex to communication from the State received on October 15, 2008.

[116] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 279. Annex to communication from the State received on October 15, 2008.

[117] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 280. Annex to communication from the State received on October 15, 2008.

[118] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 290. Annex to communication from the State received on October 15, 2008.

[119] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 291. Annex to communication from the State received on October 15, 2008.

said occasion, the petitioner's attorney also waived the right to introduce the pending evidence from custodians of records.[120]

78. On March 2, 1998, the Ciudadela Norte Club submitted a communication to the judge asserting that it did not have any physical evidence (club membership card, for example) to certify that Sebastian had practiced any sport at said institution; further noting that based on the comments provided by Sebastian's father it was "more than likely" that he [Sebastian] had been connected [to the club] through a federation league as a basketball player of said institution, and that this information could be obtained at the Regional Basketball Federation of the Federal Capital.[121] On March 5, 1998 a report submitted by Technical Education School No. 4 was entered into the case file of the proceedings reporting on school performance of Sebastian during the school years prior to and after December 1988.[122]

79. On September 28, 1998 the presiding judge of the Juvenile Court No. 1 of the Judicial Department of San Martin sent *ad effectum vivendi et probandi* and subject to return, Case file No. 18.903, titled "Furlan, Sebastian Claus re victim. Serious bodily harm."[123]

80. The medical-psychological expert submitted his report, which was forwarded to the parties by court order on March 5, 1999.[124] The petitioner's attorney requested two clarifications from this expert, which were answered by him in his brief submitted on May 11, 1999.[125] On November 15, 1999, the expert neurologist submitted his report, on which occasion he also delivered an envelope containing a gadolinium-enhanced Encephalic Nuclear Magnetic Resonance.[126] On November 29, the petitioner's attorney requested some clarification from the expert neurologist based on his written report, to which the expert replied in December 1999, specifying that the duration of the physio-kinesiologic therapy treatment should be for at least two years.[127]

81. On February 25, 2000, the petitioner's attorney requested that the evidence be certified and that the evidentiary period be closed.[128] On March 2, 2000, the court certified that no

---

[120] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 275. Annex to communication from the State received on October 15, 2008.

[121] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 106. Annex to communication from the State received on October 15, 2008.

[122] Note No. 05/98 from Technical Education School No. 4 dated March 3, 1998, case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 109 and 110. Annex to communication from the State received on October 15, 2008.

[123] No copy of the proceedings of this case appears in the case file of the IACHR. The parties make no reference to this case in their communications to the Commission and, in the context of the suit for damages the civil court only mentions this case as a reference in the trial court judgment. See *whereas clause I* of the trial court judgment which mentions the inspection visit of the property and the sketch made thereof, which were carried out in the context of said case before the juvenile court. Also see letters of notice of request from the case dated March 16, 1998 and September 10, 1998. Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 181, 183, 285, 286 and 321 back. Annex to communication from the State received on October 15, 2008.

[124] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 243-247. Annex to communication from the State received on October 15, 2008.

[125] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 250 and 259. Annex to communication from the State received on October 15, 2008.

[126] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 266-270. Annex to communication from the State received on October 15, 2008.

[127] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 271 and 274. Annex to communication from the State received on October 15, 2008.

[128] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 94 and 95 back. Annex to communication from the State received on October 15, 2008.

further evidence was pending production and, on March 6, he 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.[129]

82. On April 6, 2000, the attorney for the petitioner submitted his arguments on the merits of the evidence introduced in the proceedings.[130] On April 11, 2000, the EMGE's attorney submitted her arguments on the merits of the evidence introduced in the case, requesting that the case be dismissed.[131] On April 18,[132] and May 23, 2000,[133] and on another occasion between July and September of the same year,[134] the petitioner's attorney submitted motions requesting the judge to issue the ruling.

83. In the trial court judgment, issued on November 7, 2000, the court ruled that the complaint was admissible, establishing that the injury inflicted upon Sebastian was the consequence of an unlawful attitude of carelessness or neglect on the part of the State, as the owner and the party responsible for the property because of the conditions of the land (i.e. abandoned, with the presence of hazardous elements, in a state of disrepair and without any enclosure or perimeter fencing). Additionally, the judgment establishes that this property was considered by the inhabitants of the area to be a public square and of public use, where children went to play on a regular basis.

84. In its judgment, the court concluded that the State, in principle, was responsible for having generated a hazardous situation by not properly fencing in the property in order to prevent free access thereto. Nonetheless, the court also found that the case involved some responsibility on the part of Sebastian, who by his own free will and aware of the risks that could ensue from playing in uninhabited sectors with unfamiliar and abandoned elements, had displayed conduct that had a causal effect on the injurious act. Based on this, the court ascribed 30% of the responsibility to Sebastian and 70% to the State. Finding merit to the complaint against the State, and consequently ordering the National State-General Staff of the Army to pay Sebastian the amount of 130,000 pesos plus interest (in proportion and in keeping with the guidelines provided in the judgment), and ordering the State to pay the court costs and legal fees, inasmuch as it had been substantially defeated and also taking into account the nature of the claim.[135]

85. This judgment was appealed by both parties; the EMGE appealed on September 15 and the petitioner on September 18, 2000.[136] The appeals court judgment, issued on November 23,

---

[129] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 292. Annex to communication from the State received on October 15, 2008.

[130] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 312-315 back. Annex to communication from the State received on October 15, 2008.

[131] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 316-318 back. Annex to communication from the State received on October 15, 2008.

[132] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 294. Annex to communication from the State received on October 15, 2008.

[133] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 305. Annex to communication from the State received on October 15, 2008.

[134] See document titled "enforce the order. Judgment is issued," undated. Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 319. Annex to communication from the State received on October 15, 2008.

[135] Trial Court Judgment issued on September 7, 2000, National Court for Federal Civil and Commercial Matters, Chamber No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for Damages", page 326 back. Annex to communication from the State received on October 15, 2008.

[136] Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 329 and 330. Annex to communication from the State received on October 15, 2008.

2000 "upheld the judgment on appeal with regard to the decision on the principal claims and amended it with regard to court costs and fees, which are assessed at 30% on the plaintiff and 70% on the defendant."[137]

86. In an order issued on November 30, 2000, the judge ruled that in accordance with Article 6 of Law 25.344[138] on economic-financial emergency, time periods governed by procedural law were suspended: a letter to the Office of the Attorney for the Treasury of the Nation was issued, a period of 20 days from the time of receipt thereof [of the letter] would be calculated, after the period lapsed, the procedurally established deadlines would be operative again, without further proceedings.[139] After said order was served on February 2, 2001,[140] through his attorney, the petitioner filed a motion with the judge on March 22, 2001 to order the lifting of the suspension of the time periods established by procedural rules, and to proceed to transfer the payment.[141] On May 15, 2001, the judge approved the sum of 103,421.40 pesos in payment to the petitioner,[142] and on May 30, 2001 a record was entered in the case file indicating that said payment was "firm, agreed

---

[137] Appellate Court Judgment issued on November 23, 2000, National Court for Federal Civil and Commercial Matters, Chamber No. 9, Clerks Office No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for Damages," page 355 back. Annex to communication from the State received on October 15, 2008. Free translation by the IACHR.

[138] Law 25.344 Economic-financial emergency. Declaration. Suits against the National State. Subject of Social Assistance. Consolidated public assistance debts. Issuing of Bonds. Situations of exception. Amendment to the National Law of Administrative Procedures. Approved on Nov. 19, 2000 and enacted on November 14, 2000 (Official Bulletin, November 21, 2000).

CHAPTER IV Suits against the National State

ARTICLE 6.- In every suit brought against agencies of the centralized and decentralized national public administration, social works of the public sector, official banks and financial entities, armed forces and security forces, corporations with majority state ownership, partially state-owned corporations, special accounts services, and any other entity in which the National State or its decentralized entities own or hold all or a majority of the capital shares or the authority to make corporate decisions, time periods governed by procedural rules shall be suspended until the court sua sponte or the plaintiff or the legal representative thereof communicates to the Attorney for the Treasury of the Nation the existence thereof [of the suit], title, case file number, court admission order, agency involved, status of the proceedings, and the particular amount being claimed, amount determined or to be determined. The Office of the Attorney for the Treasury of the Nation shall have a period of twenty (20) days from the date of notification to take the measure it deems pertinent, and after that deadline expires, the time periods governed by procedural rules shall go back into effect. With regard to *amparos* or summary proceedings on social assistance, the time period shall be five (5) days. The communication set forth in the first paragraph of this article can be carried out by official letter, or as approved by the regulations or by registered letter or any other reliable means. In all instances, the instrument must be approved by the court involved with the respective seal. Any communication that does not meet the requirements set forth above or contains incorrect or false information shall be rendered null and uncurable. The Office of the Attorney for the Treasury of the Nation must keep an updated register of the State's law suits. For suits that are brought on the basis of the present law, the provisions of Articles 8, 9, 10 and 11 shall govern.

[139] Order November 30, 2000, Case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 356. Annex to communication from the State received on October 15, 2008.

[140] Certificate of service of papers, date of receipt of service: February 2, 2001, case proceeding records titled "Furlan Sebastian Claus v National State for Damages," page 359. Annex to communication from the State received on October 15, 2008.

[141] Request from Attorney Rafael Matozo Gemignani, Attorney for the plaintiff, submitted on March 22, 2001, case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 363. Annex to communication from the State received on October 15, 2008.

[142] Order May 15, 2001, case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 368. Annex to communication from the State received on October 15, 2008.

to and unpaid."[143] On December 2, 2002, Danilo Furlan submitted a pleading stating that he had not received the damages payment that had been ordered.[144]

87. The crediting of Consolidated Bonds in National Currency Fourth Series 2% in national currency was carried out in Final Note No. 327 addressed to the Securities Bank (*Caja de Valores*), dated December 17, 2002.[145] On March 10, 2003, the petitioner conveyed to the IACHR that on March 12, the bonds from the damages awarded by the Argentine courts would be cashed in, and that cashing of said bonds in no way would change his claim before the IACHR.[146] On March 17, 2003, the petitioner forwarded to the judge a letter stating: "we finally collected the award."[147]

88. With regard to the amount received by the petitioner, the court judgment ordered payment of 130,000 pesos, as principal plus interests, and after applying the ascribed percentages of responsibility of 30-70%, said calculation yields the amount of 103,421.40 pesos. Danilo Furlan cashed in the bonds on March 12, 2003 at 33% of their nominal value,[148] that is, 34,129.06 pesos. In accordance with the terms of the judgment, the petitioner was supposed to pay court costs and legal fees based on the 30-70% responsibility ascribed in the judgment. The total amount of experts' professional fees and of the attorneys' fees was 29,800 pesos[149], of which 30% or 8,940 pesos had to be covered by the petitioner, and were to be deducted from the amount received from cashing in the bonds. After subtracting this amount in fees, Danilo Furlan received 25,189.06 pesos, of the 130,000 pesos that were ordered to be paid in the judgment.

---

[143] Certificate May 30, 2001, case proceedings file titled "Furlan Sebastian Claus v National State for Damages," page 369. Annex to communication from the State received on October 15, 2008.

[144] Request of Danilo Furlan dated December 2, 2002, received that same day, case proceedings file titled "Furlan Sebastian Claus v National State for Damages," pages 405-407. Annex to communication from the State received on October 15, 2008.

[145] Note No. 376/2003, Ref EXP.GA 148 97/5 dated February 23, 2003, issued by the Secretariat of Finances, Ministry of Economy, addressed to the Ministry of Foreign Relations, Commerce and Worship, Office of Human Rights. Annex to communication from the State from February 27, 2003. The State further claims that, in accordance with domestic law, all court judgments issued against the National State are executed in the same way. The IACHR understands that the domestic law to which the State is referring is a group of statutes and decrees that were approved by the State in 2002, on the occasion of the financial emergency that the country was going through. Furthermore, Decree 1873/2002, published in the Official Bulletin on September 24, 2002, indicates that debts funded by several laws, including laws 25.344 (Economic-Financial Emergency) and 25.565 (General Budget of the National Administration for fiscal year 2002), shall be paid through delivery of 4th Series 2% Debt Payment Bonds in National Currency by the Ministry of Finance. Law No. 25.565 establishes in Article 39 that court awards that order the National State or the National Public Sector to pay an amount of money, shall be satisfied within the authorizations to make expenditures contained in the different jurisdictions and entities of the General Budget of the National Administration. According to Decree 1873/2002, Official Bulletin September 24, 2002; Law 25.344, Economic-Financial Emergency, approved on October 19, 2000 and enacted on November 14, 2000; Law 25.565, General Budget of the National Administration for fiscal year 2002, approved on March 6, 2002 and partially enacted on March 19, 2002. Available on the Internet.

[146] Communication of the petitioner dated March 10, 2003, received at this Executive Secretariat by fax on that same date.

[147] Communication from Danilo Furlan March 17, (year illegible), pages 458-459 back; document received at hearing, record of judge and order to add it to the case file on March 17, 2003, page 460. Case proceedings file titled "Furlan Sebastian Claus v National State for Damages." Annex to communication from the State received on October 15, 2008.

[148] With regard to the redemption of the bonds at 33% of the nominal value, the IACHR notes that the petitioner argues that this is not disputed by the State, and neither is there any evidence before the IACHR to the contrary. Communication of the petitioner received on June 3, 2010.

[149] See decision dated June 5, 2001 and decision dated August 14, 2001 from the National Court for Federal Civil and Commercial Matters, Chamber No. 18, Case File No. 3.519/1997, case proceeding records titled "Furlan Sebastian Claus v National State for Damages", pages 371, 384, 391. Annex to Communications from the State received on October 15, 2008.

89. Danilo Furlan had to cash in the bonds prior to their maturity date in January 2016 because he could not wait 13 more years to repay huge debts to his relatives for expenses stemming from more than 12 years of treatment and medical, psychiatric and psychological care for Sebastian.[150] The petitioner's economic situation does not enable him to continue to defray the expenses relating to the continual treatment for his son Sebastian, in addition to support expenses, in light of the fact that he is unable to hold a regular job.[151] The petitioner redeemed the bonds early also because he had no money to cover the attorney's fees and court costs.[152]

VII. LEGAL ANALYSIS

1. Right to a fair trial and judicial protection (Articles 8.1, 25.1 and 1.1 of the American Convention)

90. Article 8 of the Convention mentions the judicial guarantees whose compliance is required in all proceedings for determination of rights and obligations. Accordingly, section 8.1 specifically provides that compliance is mandatory within a reasonable time established in order to avoid unnecessary delays that may lead to a deprivation or denial of justice.[153] 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.

91. Moreover, Article 25.1 sets forth the obligation of States to provide to all persons within their jurisdiction the free and full exercise of the right to an effective judicial remedy against acts violating their fundamental rights,[154] recognized in the Convention, the constitution or the law.[155] Article 25.1 states verbatim 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.

92. The Court and the Commission have consistently stressed the close relationship between the rights set forth in these articles. The aforementioned right to an effective remedy

---

[150] Argument of the petitioner that is not disputed by the State and there is no compelling evidence in the case file to suggest otherwise.

[151] Argument of the petitioner that is not disputed by the State and there is no compelling evidence in the case file to suggest otherwise.

[152] Argument of the petitioner that is not disputed by the State and there is no compelling evidence in the case file to suggest otherwise.

[153] IACHR, Report No. 100/01, Case 11.381, *Milton García Fajardo et al,* Nicaragua, October 11, 2001, para. 51.

[154] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras.* Judgment of July 29, 1988. Series C No. 4, para. 91; I/A Court H.R., *Case of Kawas Fernández v. Honduras.* Merits, Reparation and Costs. Judgment of April 3, 2009 Series C No. 196, para. 110; I/A Court H.R., *Case of Castañeda Gutman v. Mexico Case*. Preliminary Objections, Merits, Reparation and Costs. Judgment of August 6, 2008. Series C No. 184, para. 34; I/A Court H.R., *Acevedo Buendía et al (Dismissed and Retired Employees of the Office of the Comptroller) v. Peru.* Preliminary Objection, Merits, Reparation and Costs. Judgment of July 1, 2009 Series C No. 198, para. 69.

[155] I/A Court H.R., Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 of the Inter-American Convention on Human Rights), OC 9/87 of October 6, 1987, Series A No. 9, para. 23.

established in Article 25.1 must operate under the due process standards provided in Article 8.1 of the Convention, all within the general obligation of the States set forth in Article 1.1 of said treaty to ensure to all persons within their jurisdiction the free and full exercise of the rights as recognized by said treaty.[156] Article 1.1 of the American Convention provides 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.

93. The right of every person to a simple and prompt recourse or any other effective recourse for protection against acts that violate his or her human rights is one of the basic pilars of the American Convention and the Rule of Law in a democratic society and is closely tied to the general obligation established in Article 1.1 of the American Convention, conferring protective functions on the domestic laws of the States.[157]

94. Citing the Inter-American Court, the Commission has established that in order for an effective recourse to exist, it is not enough that it be provided for by the Constitution or the law, but rather it must be truly suitable for establishing whether a violation of human rights has occurred and for providing the necessary means for its remedy; thus, recourses that are illusory, as a result of a denial of justice, such as when there is unwarranted delay in the decision, cannot be considered effective.[158] The Commission has also established that an essential element of effectiveness is timeliness; moreover, the right to judicial protection requires the courts to adjudicate and decide cases expeditiously,[159] particularly with respect to urgent cases.[160]

95. In the case under consideration, there is a dispute between the parties as to responsibility for the delay in the proceedings; that is, as to whether the delay was unwarranted or not, and whether the delay can be ascribed to the State. Therefore, the first thing that must be determined is what period of time should be examined by the IACHR in order to assess reasonableness or unreasonableness, as the case may be, upon which the Commission shall rule on State responsibility. On this topic, the Commission and the Court have stated that "the reasonable

---

[156] IA Court HR, *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 127.

[157] See for example, IA Court HR, *Case of Castillo Páez v. Peru.* Judgment of November 3, 1997. Series C No. 34, paras. 82-83; I/A Court H.R., *Case of Suárez Rosero v. Ecuador.* Judgment of November 12, 1997. Series C No. 35, para. 65; IA Court H/R *Case of Blake vs. Guatemala.* Judgment of January 24, 1998. Series C No. 36, para. 102; I/A Court H.R., *Case of the "White Van" (Paniagua Morales et al) v. Guatemala.* Judgment of March 8, 1998. Series C No. 37, para. 164; I/A Court H.R., *Case of Castillo Petruzzi et al v. Peru.* Judgment of May 30, 1999. Series C No. 52, para. 184; I/A Court H.R., *Case of Durand and Ugarte v. Peru.* Judgment of August 16, 2000. Series C No. 68 para. 101; I/A Court H.R., *Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua.* Judgment of August 31, 2001. Series C No. 79, para. 112; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al v. Trinidad y Tobago.* Judgment of June 21, 2002. Series C No. 94, para. 150; among others.

[158] IACHR, Report No. 100/01, Case 11.381, *Milton García Fajardo et al*, Nicaragua, October 11, 2001, para. 81 citing the Inter-American Court of Human Rights, Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87, of October 6, 1987, series A, No 9, para. 24. Also see I/A Court H.R., *Case of Ivcher Bronstein v. Peru.* Judgment of February 6, 2001. Series C No. 74, par 137.

[159] See Case 11.218, Report No. 52/97, Arges Sequeira Mangas (Nicaragua), Annual Report of the IACHR 1997, para. 106 (wherein it is established that one of the components of judicial protection is the right to a simple and prompt recourse). Also see the I/A Court H.R., *Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua.* Judgment of August 31, 2001. Series C No. 79, para. 134 (wherein it is noted that remedies are illusory and ineffective if unwarranted delay exists in reaching a decision on them).

[160] IACHR, Report Nº 40/04, Case 12.053, Merits, *Mayan Indigenous Communities of the District of Toledo,* Belize, October 12, 2004, para. 176.

time referred to in Article 8.1 of the Convention must be analyzed in relation to the total duration of the proceeding until a final judgment is rendered."[161]

96. The IACHR notes that the suit for damages lasted from December 18, 1990, the date of the filing of the complaint, until November 23, 2000, the date the final judgment was rendered. In the present case, the IACHR must also take into consideration that the judgment execution stage took another two years, until December 17, 2002, when the bonds were credited to the account of the plaintiff as the damages award. Therefore, a period of at least twelve years, from the time the complaint was filed until the bonds were credited, constitutes the period of time under examination by the IACHR in order to determine reasonableness.

97. The IACHR also finds it necessary to recall that the right to judicial protection would prove to be illusory if domestic law allowed a binding final judicial decision to remain ineffective to the detriment of one of the parties.[162] Furthermore, "judgment enforcement is part of the legal process —the due process of the law— and, hence, the States must ensure that said enforcement is carried out within a reasonable time".[163]

98. Additionally, the bodies of the Inter-American human rights system have referred to the elements that must be taken into account to determine reasonableness of time in a case –and thereby be able to determine whether the State has provided a "simple and prompt recourse" with due process guarantees within a reasonable time. These elements are: a) the complexity of the matter; b) the procedural activities carried out by the interested party; and c) the conduct of the judicial authorities.[164] The Court has also established that in addition to these elements, the interest at stake and the adverse effect caused by the duration of the proceeding on the situation of the person involved must be taken into consideration, as is stated hereunder:

> In addition, the Court finds it pertinent to clarify that, in this analysis of reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements the matter in dispute. 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. [165]

---

[161] IA Court HR, Case 11.400, Merits, Josefina Ghiringhelli De Margaroli y Eolo, Margaroli, Argentina, March 16, 2009, para. 90, citing the I/A Court H.R., *Case of Salvador Chiriboga v. Ecuador*. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 56; I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 70; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 129; and I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 104.

[162] I/A Court H.R., *Case of Acevedo Jaramillo et al v. Peru*. Judgment of February 7, 2006. Series C No. 144, para. 219, citing ECHR, *Antoneeto v. Italy,* no. 15918/89, para. 27, ECHR, July 20, 2000; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, para. 63, ECHR, 1999-V; and *Hornsby v. Greece.* Judgment of 19 March 1997, ECHR, Reports of Judgments and Decisions 1997-II, para. 40.

[163] Reasoned Opinion of Judge A.A. Cançado Trindade to IA Court H/R Judgment in the Jaramillo case, para. 3.

[164] IACHR, Report Nº 100/01, Case 11.381, *Milton García Fajardo et al*, Nicaragua, October 11, 2001. I/A Court H.R., *Case of Genie Lacayo v. Nicaragua.* Judgment of January 29, 1997. Series C No. 30, para. 77*;* I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 72; I/A Court H.R., *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparation and Costs. Judgment of October 30, 2008. Series C No. 187, para. 107; and I/A Court H.R., *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparation and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155.

[165] I/A Court H.R., *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155. Also see, I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, paras. 112 and 115; I/A Court H.R., *Case of Anzualdo Castro v. Peru.* Preliminary Exception, Merits, Reparations and Costs. Judgment September 22, 2009. Series C No. 202, para. 156; I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Exceptions, Merits, Reparation and Costs. Judgment of September 23, 2009. Series C No. 203, para. 133; I/A Court H.R., *Case of Radilla Pacheco v. Mexico.* Preliminary

99. In other words, analysis of reasonable time does not involve a mathematical calculation, but rather consideration of the particular circumstances of each case. It is also necessary to take into account how the proceedings affect the rights and duties of the persons awaiting the decision. This is because, in some cases, the amount of time that has elapsed while damages amounts are being weighed in is not very relevant, but in other cases, it is very detrimental to the victim; which is why "the other elements used to assess reasonableness – complexity of the matter and conduct of authorities and private individuals – should also be examined in light of the prejudice that is being caused to the victim."[166]

100. The European Court of Human Rights has also established that the duration of the proceedings is determined on the basis of the circumstances of the case, and in keeping with the following criteria: (a) the complexity of the case; (b) the conduct of the party; (c) the conduct of the authorities; and (d) the importance of what is at stake for the party in the case.[167]

101. Taking into account the arguments of the parties and the case law cited above, the Commission must determine whether the facts established in the present case with regards to the proceedings prove that Sebastian Furlan and his father, Danilo Furlan,[168] had access to a simple and prompt recourse and whether they were heard within a reasonable time, as provided in Articles 8.1 and 25.1 of the American Convention, in accordance with the general obligation to ensure rights established in Article 1.1 of said treaty.

102. With regard to the element of the complexity of the matter, the Commission notes that the present 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 is (i) whether the damages occurred (or in the words of the court, "presence of the elements of primary fact that gave rise to the claim"), (ii) whether that act can be attributed to the State, and (iii) once responsibility is ascribed, to execute the judgment.

103. Therefore, 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. The Commission

---

Objections, Merits, Reparation and Costs. Judgment of November 23, 2009. Series C No. 209, para. 244. Also see the Reasoned Opinion of Judge Sergio Garcia Ramirez to the Judgment of the Inter-American Court of Human Rights on the *Case of Lopez Alvarez vs. Honduras,* February 1, 2006, para. 29; Reasoned Opinion of Judge Sergio Garcia Ramirez to the Judgment of the Inter-American Court of Human Rights of March 29, 2006, in the *Case of Sawhoyamaxa Indigenous Community vs. Paraguay*, para. 8; Reasoned Opinion of Judge Sergio Garcia Ramirez to the Judgment of the Inter-American Court of Human Rights on the *Case of Lopez Alvarez vs. Honduras,* February 1, 2006, para. 29; Reasoned Opinion of Judge Sergio Garcia Ramirez on the Judgment of the Inter-American Court of Human Rights of June 29, 2006, in the *Case of the Massacre of Ituango*, para. 26; Concurring Opinion of Judge Sergio Garcia Ramirez with the Judgment of the Inter-American Court of Human Rights regarding the *Case of Valle Jaramillo et al* of November 27, 2008, paras. 9-14.

[166] See concurring opinion of Judge Sergio Garcia Ramirez with the Judgment of the Inter-American Court of Human Rights regarding the *Case of Valle Jaramillo et al* of November 27, 2008, paras. 9 and 12. "Time does not elapse equally for everyone, and the elements usually taken into consideration to establish the reasonableness of time do not affect everyone in the same way."

[167] See ECHR, X vs. France, March 31, 1992, Series A, No. 234-C, pg. 90, para. 32; ECHR, Silva Pontes vs. Portugal, March 23, 1994, Series A no. 286-A, p. 15, para. 39; ECHR, *Frydlender v. France* [GC], no. 30979/96, para. 43; ECHR 2000-VII. ECHR, Mészáros v. Hungary, no. 21317/05, January 21, 2009, para. 15.

[168] Established facts indicate that Danilo Furlan, Sebastian's father, filed the complaint in the domestic courts and moved the case forward during all of the stages, in light of the fact that Sebastian was a minor and, for that reason, the petitioner came forward as his legal representative in the proceedings. The IACHR further notes that even though it is a proven fact that Sebastian began to take part in the proceedings once he reached adult age, on October 38, 1996, it is on record in the case file that Danilo Furlan continued to take part in the proceedings, even as his legal representative, as is mentioned in the judgment of September 7, 2000.

notes that nothing in the case file indicates that this was a complex proceeding, nor has the State argued or proven that it was.

104. As for the element of the activity of the interested party, the State has asserted that the delay in the court proceedings is a consequence of a lack of diligence on the part of the plaintiff. Specifically, it claims that it did not take five years to recognize that it owned the property where the accident occurred, as alleged by the petitioner, inasmuch as it had not even been served notice of the complaint brought. The State further argues that said length of time can be attributed to the fact that the plaintiff responded five years later to the judge's request of November 1991 to specify against whom the complaint was directed.[169]

105. Nonetheless, the Commission notes that, based on the proven facts, on March 13, 1992, that is, four months after the court's request, the petitioner's attorney stated that the suit was directed against the Ministry of National Defense, inasmuch as it is the State agency to whom the site where the accident occurred belonged to. Notwithstanding, without prejudice to that, the petitioner's attorney requested that a letter be issued to the Property Registry for it to provide information on ownership of the property.[170]

106. The Commission further notices that there was a period of procedural inactivity between April 1994 —when the court placed on the record the delivery of a letter addressed to the Property Registry— and February 1996 —when the attorney for the petitioner withdrew her request regarding the letters to the aforementioned Registry. The IACHR notes that since said institution did not respond to the request for information on ownership of the property, the attorney for the petitioner needed to withdraw her request for said evidence. It should be said that verification of ownership of the property was the responsibility of the State, which had said information in its possession. Therefore, the Commission finds no basis to attribute the inactivity to the plaintiff.

107. The IACHR also finds it important to remember that in evaluating reasonableness of time, even in proceedings other than those of a criminal nature, the Inter-American Court has affirmed that the State "in its exercise of judicial function, holds a public duty, thus the behavior of the judicial authorities do not exclusively depend on the procedural effort of the plaintiff to the proceedings."[171]

108. Lastly, nothing appears in the case file before the IACHR to suggest that the plaintiff had taken any measures or filed any motions in the domestic proceedings for the purpose of stalling or delaying the course of the proceedings. In fact, the Commission notes that the petitioner, by means of his legal representative, consistently came forth in the case requesting the court to proceed with the trial and, following completion of the evidentiary stage, he continually and repeatedly requested the judge to issue the judgment in the case.[172] Furthermore, it appears on the

---

[169] Communication of the State forwarded in note No. 74 received on February 23, 2009, p. 5.

[170] Communication of the State forwarded in note No. 74 received on February 23, 2009, p. 3.

[171] I/A Court H.R., *Case of Salvador Chiriboga v. Ecuador*. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 83; I/A Court H.R., *Case of Acevedo Buendía et al ("Dismissed and Retired Employees of the Comptroller's Office") v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment July 1, 2009 Series C No. 198, para. 76. Additionally, in a case decided by the European Court pertaining to compensation stemming from an expropriation in which the court determined that there was a violation of the right to be heard within a reasonable time, the court noted that the plaintiff had contributed to the procedural delay —in pursuing a remedy before the court that was not the adequate one— but that notwithstanding, the State was more at fault for its bearing on the delay in having taken more than five years to hold the first hearing in the case. *Beaumartin v. France*, 15287/89, Council of Europe: European Court of Human Rights, October 25, 1994.

[172] See for example, the following pleadings submitted by the attorney for the petitioner in the civil suit for damages against the State: "Continue with proceedings" (motion filed on May 24, 1991, page 19); "I request order" (motion filed on November 8, 1991, page 21); "I request report– (...)" (motion filed on November 10, 1993, page 38); "Add record"

record that the interested party submitted several motions to request that follow-up to the case be conducted, even during the judgment execution stage.[173]

109. Based on established facts, the arguments of the parties and foregoing background information, the IACHR finds that the State has not shown, as it alleges, that the procedural activity of the interested party was negligent or dilatory.

110. As for the element of the conduct of the judicial authorities, the IACHR notes periods of time during which there was no procedural activity by the State. For example, more than 5 years went by between the filing of the complaint and notification by the court. Thus, as has been established in the proven facts, it was not until November 14, 1991, that is, 11 months after the filing of the complaint, that the judge requested the petitioner to state against whom the suit was directed, to which he [the petitioner] responded four months later, in March 1992, that it was against the Ministry of Defense. Additionally, on said opportunity the petitioner asked the court to request certain evidence from an agency of the State, which did not respond, despite the efforts made by the plaintiff and an explicit court order to do so. Based on the foregoing, the complaint filed in December 1990, was not served on the defendant until February 1996. Therefore, the IACHR believes that the delay of several years in notifying the Ministry of Defense of the complaint has not been explained or justified by the State.

111. Another example of delay in the judicial proceedings in this case is that the Ministry of Defense provided its answer to the complaint more than six months after it was served, despite the 60-day deadline set for it to do so.

112. Moreover, on October 1997, at the request of the attorney for Sebastian, the judge opened the proceedings to take evidence for a period of 40 days, giving the parties 10 days to introduce evidence. It is an established fact that the court issued the order for the evidence offered by the plaintiff and set the month of August 1998, that is, nine months after offering the evidence, as a deadline to receive testimonial statements. Additionally, in February 1998, the judge appointed the expert witnesses that had been requested by the plaintiff. Nonetheless, as of December of 1998, no psychological report had been submitted and, for this reason, the plaintiff requested the court to order it to be submitted under threat of removal of appointment. Neither had there been any substantial progress in obtaining the neurological expert report. The psychological and neurological expert reports, therefore, were not forwarded by the judge to the parties until March and November 1999 respectively, in other words, more than a year and a year and a half [respectively] after the appointments. Consequently, it was not until March 2000, more than nine years after the complaint was filed in the case, that the court certified that no further evidence was pending production.

(motion in which, in addition to adding a record, the plaintiff requests "order for the defendant to appear;" filed on September 9, 1996, page 51); "States [he] be directed" (motion filed on March 17, 1997, page 66); "Order opening of evidentiary [stage]" (motion filed on October 21, 1997, page 90); "Direct expert to submit report" (motion filed on December 10, 1998, page 221); "Certify evidence.- Close evidentiary period" (motion filed on February 25, 2000, page 94); "Issue judgment" (motion filed on April 18, 2000, page 294); "Issue judgment" (motion filed on May 23, 2000, page 305); "Enforce order and issue judgment" (motion filed between April and September, 2000, page 319). Case proceedings file titled "Furlan Sebastian Claus Vs National State for Damages." Annex to communication from the State received on October 15, 2008.

[173] Motion submitted by the attorney for the petitioner (undated, but after judgment was issued – it is missing "back" of the page), titled "Performance payment on 1-4-91 (Lay 23.982 and Dec. 2140) Formula reserve" (on page 362); Motion submited on March 22, 2001 titled "Lift supension of procedural time periods. Serve notice of liquidation" (on page 363); Motion submitted on April 3, 2001 titled "Issue order" (page 365); Motion submitted by the attorney for the petitioner (undated, but after the judgment was issued – missing "back" of page), titled "Approve payment. Request certified copies. Request certificate;" Motion filed by by Danilo Furlan on December 2, 2002 (on pages 405-406). Case proceedings file titled "Furlan Sebastian Claus v. National State for Damages." Annex to communication from the State received on October 15, 2008.

113. It is also on record in the court file that at least on two occasions the Ministry of Defense authorities failed to appear at hearings called by the judiciary. For example, in March 1997, the court called a settlement hearing in order for the parties to attempt to reach a settlement; however, the Army Staff failed to attend. Subsequently, in February 1998, once again, Army Staff failed to attend a cross-examination hearing requested by the military authority itself.

114. A further example of the lack of procedural activity by the State is that despite the firm and binding final judgment that was rendered on November 23, 2000, the bonds were not credited to the petitioner's account until December 17, 2002, and he did not received the reparation until March 12, 2003. In other words, the judgment was not executed until more than two years after it was rendered.

115. With regard to the foregoing, the IACHR notes that the conduct of the judicial authorities in a proceeding in which the defendant is the State itself—as is the case with administrative civil suits or civil suits in which a ruling on civil liability is being pursued for damages by a State entity, such as the General Staff of the Argentine Army– such a proceeding must be analyzed taking into account that it is not a civil suit between private parties. In fact, suits in which one of the parties is the State can have specific characteristics with regard to each party's access to information and resources. Even though the IACHR believes that this analysis must be done on a case by case basis, it concludes that, taking into account the particular circumstances of the present case in which the information requested was in the possession of a State entity, Argentina has failed to prove that the conduct displayed by the judicial authorities was diligent.

116. Taking into account the abovementioned, that is, the delay of several years by the tribunal to serve the complaint to the Ministry of Defense; the one-year and one-year-and-a-half delays in forwarding the experts reports to the parties; failure of the military authorities to attend the hearings on settlement and for cross-examination; the fact that although the IACHR established that the case was not complex, the tribunal took more than nine years to certify that no further evidence was pending production; the delay of more than 2 years in executing the sentence; as well as the fact that the case was brought against a State entity and not between individuals, the Commission concludes that it is proven that the conduct by the State authorities in the domestic proceedings was not diligent.

117. The IACHR additionally notes that the examination of the element of the conduct of the judicial authorities is closely linked to the infringement of the rights of the party at-interest. In cases where infringement of the rights of the party at-interest is of dire importance to a person's life or physical integrity, the European Court has stressed the duty of the State to apply a special degree of diligence.[174] In the present case, the IACHR notes that the purpose of the proceedings was to determine State's responsibility in Sebastian's case —whose accident resulted in permanent physical and psychological disability at 14 years of age— which would lead to monetary reparation deemed key to providing adequate and timely rehabilitation treatment and psychological and psychiatric assistance to Sebastian. The IACHR believes, on this point, that the processing of the proceedings in this particular case warranted a special degree of diligence from the judicial authorities.

118. Along these same lines, the IACHR points to the case of *Silva Pontes v. Portugal*. In determining the reasonableness of time in a civil suit for damages between private individuals stemming from a traffic accident, the European Court held in this case that considering the significance of the proceedings to the victim, who had been left severely disabled and consequently unable to work, a special degree of diligence is necessary in determining compensation for traffic

[174] ECHR, H. vs. United Kingdom, July 8, 1988, para. 85.

accident victims.[175] In said case, the Court ruled that the almost nine-year duration of the proceedings until final judgment was rendered was excessive in itself, and that further prolonging it during the process of execution of judgment to eleven years and one month constituted a violation of the right to be heard within a reasonable time.[176]

119. The IACHR finds that the reasoning used in said case with regard to the special degree of diligence that should be applied by civil courts in determining damages awards in cases of accidents that result in severe disability, also applies to the instant case. The Commission notes that Sebastian sustained a severe disability as a result of the accident, the consequences of which required timely and multidisciplinary treatment and, in light of the precarious economic situation of the petitioner, he needed the award to be made available to him.

120. Furthermore, the Inter-American Court has stated that the guarantees set forth in Articles 8 and 25 of the American Convention are recognized as applying to all persons equally, and must exist in conjunction with the specific rights also enshrined in Article 19 (the rights of the child, which will be examined more thoroughly hereafter), and come to bear on any administrative or judicial proceeding in which any right of a child is at stake.[177] Said Court has also established that judicial or administrative proceedings wherein children's rights are at issue must adhere to the principles and standards of due process of law.[178] Additionally, in analyzing reasonable time, the IACHR takes into account the fact that Sebastian Furlan was an adolescent when he sustained the permanent damage and, therefore, required the attention and rehabilitation befitting his stage of development.

121. In light of the foregoing, the Commission concludes that (a) this is not a case involving a great deal of complexity; (b) there is nothing in the record to indicate that the procedural activity of the interested party has been negligent or dilatory; (c) the conduct of the judicial authorities, particularly with regard to the delay that marred the serving of notice of the complaint, was not diligent; and (d) the infringement of Sebastian's rights due to the length of time was and continues to be severe, taking into account the need for timely and effective rehabilitation and treatment for his disability. Therefore, the IACHR concludes that there was 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 to the account of the petitioner.

122. Based on the above, the Commission finds that the Argentine State violated, to the detriment of Sebastian and Danilo Furlan, the right to be heard within a reasonable time and the right to a simple and prompt recourse, as an important part of the right to a fair trial and judicial protection, as provided in Articles 8.1 and 25.1 of the American Convention, in connection with the general obligation to ensure the free and full exercise of the human rights established in Article 1.1 thereof.

---

[175] ECHR, Silva Pontes vs. Portugal, March 23, 1994, Series A No. 286-A, p. 15, para. 39.

[176] ECHR, Silva Pontes vs. Portugal, March 23, 1994, Series A no. 286-A, p. 15, paras. 38, 40-42. In another related case of delay in an administrative proceeding pertaining to a damages award for HIV transmission from a blood transfusion, taking into account the significance of the passage of time on the situation of the interested party (in becoming an HIV carrier) and his life expectancy, the European Court ruled that the duration of the two-year-long case was excessive, in light of the fact that by the time the ruling was issued, the victim had already developed AIDS and also considering that the court had not exercised its power to speed up the proceedings of the case, once the deterioration of the the victim's health status came to its attention. ECHR, X v. France, no. 18020/91, March 31, 1992, paras. 31, 32, 47, 48 and 49.

[177] I/A Court H.R., Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02 August 28, 2002, para. 95.

[178] I/A Court H.R., Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02 August 28, 2002, operative point No. 10.

2. Right to judicial protection regarding the guarantee of enforcement of judicial decisions (Articles 25.2.c and 1.1 of the American Convention)

123. In the inter-American human rights system, a properly functioning judiciary is an essential element for the protection of human rights. In fact, the fundamental corollary to the existence of human rights is the ability to resort to the judicial bodies so that they can make sure that rights are enforced.[179]

124. In order for the judiciary to be able to serve effectively as a body of human rights oversight, guarantee and protection, not only must it exist in form, but must also be independent, impartial and its judgments must be enforced. This constitutes a right, which the member states of the Organization of American States and especially States parties to the American Convention are obligated to respect and ensure for all persons subject to their jurisdiction.[180]

125. Enforcement of judgments is, therefore, closely connected to the very concept of the jurisdictional function of the State. The main objective of said function is to satisfy the fulfillment of the law and the guarantee of legal order and of individual liberty in specific cases and by means of decisions that are binding on the parties of the respective proceeding, so that peace and social harmony prevail.[181] The corollary to jurisdictional function is that judicial decisions are enforced. Failure of judgments to be enforced not only undermines certainty of the law but also violates the essential principles of the Rule of Law. Achieving execution of judgment thus constitutes a fundamental aspect of the very essence of the Rule of Law.[182]

126. On this topic, the Inter-American Court has established that state responsibility does not end when the competent authorities issue the decision or judgment, inasmuch as the State must also ensure the means for execution of said final decision.[183] The Court has thus held that:

> [T]he effectiveness of judgments depends on their execution. The process should lead to the materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling.[184] [...]
>
> [That is, the State] must guarantee effective mechanisms to execute the decisions or judgments delivered by [the] competent authorities so that the declared rights are protected effectively.[185]

---

[179] IACHR, Annual Report 1998, Report on Paraguay, paras. 50 - 51. Annex 48. Also see Complaint of the IACHR in the *Case of Mejía Idrovo vs. Ecuador*, brought before the Inter-American Court on November 19, 2009.

[180] See Application of the IACHR in the *Case of* Mejía Idrovo vs. Ecuador, brought before the Inter-American Court on November 19, 2009.

[181] Véscovi, Enrique, *Teoría General del Proceso* ['General Theory of Process'] Editorial Temis, Santafé de Bogotá, 1984, pg. 120. Also see Application of the IACHR in the *Case of* Mejía Idrovo vs. Ecuador, brought before the Inter-American Court on November 19, 2009.

[182] See Application of the IACHR in the *Case of* Mejía Idrovo vs. Ecuador, brought before the Inter-American Court on November 19, 2009.

[183] I/A Court H.R., *Case of Acevedo Jaramillo et al v. Peru*. Judgment of February 7, 2006. Series C No. 144, para. 216; I/A Court H/R, *Case of Baena Ricardo et al v. Panama.* Preliminary Objections. Judgment of November 18, 1999. Series C No. 61, para. 79.

[184] I/A Court H.R., *Case of Acevedo Jaramillo et al.* Judgment of February 7, 2006. Series C No. 144, para. 217.

[185] I/A Court H.R., *Case of Acevedo Buendía et al ("Discharged and Retired Employees of the Office of the Comptroller")* Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009 Series C No. 198, para. 72; *Case of Baena Ricardo et al, supra* note 53, para. 82, and *Case of Acevedo Jaramillo et al, supra* note 45, paras. 216 and 220.

127. The reason behind this guarantee is that 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."[186] Furthermore, the Court has affirmed that execution of judgments is an integral part of the right of access to judicial recourse, and it must also encompass full enforcement of the respective decision; because the "contrary would imply the denial of this right."[187]

128. The Commission has further established that the obligation of the State to ensure enforcement of judicial rulings is particularly important when the party who must carry out the judgment is an organ of the State, taking into account the unequal relationship of power and resources between the parties.[188]

129. Therefore, it can be stated that the right to judicial protection would be illusory if the domestic law of the State allowed a final and binding decision to remain ineffective to the detriment of the injured party.[189] The fundamental premise of the administration of justice is the binding nature of decisions made by the judiciary on the rights and obligations of citizens, which must be executed.[190]

130. In the instant case, the petitioner puts forth two major arguments regarding execution and enforcement of the judgment award the State was ordered to pay to Sebastian. The first of these arguments pertains to the State allegedly delaying execution of judgment, that is, the award was not actually paid until more than 2 years after said judgment was rendered. In response, the State contends that no unwarranted delay can be ascribed to it. On this issue, the Commission finds that said arguments have already been examined in the reasonable time analysis above.

131. The second argument, consisting of three aspects, is related to the damages awarded by the domestic court. The first aspect pertains to questioning the amount that was awarded as damages; the second one has to do with the fact that the judgment ordered the State to pay in pesos and, in the end, it was paid in bonds; and the third aspect is related to the difference between the amount awarded in the judgment and the amount actually received by the petitioner. The State counters that all three aspects of the petitioner's second argument fall outside of the scope of jurisdiction of the IACHR.

132. Regarding the petitioner's argument of inadequacy of the amount awarded by the domestic courts as compensation for damages in the case of his son, the Commission finds that –as was established in its admissibility report[191]- it is not up to the bodies of the system in this specific case to examine this particular issue of the amount awarded by the sentence.

---

[186] I/A Court H.R., *Case of Acevedo Buendía et al ("Discharged and Retired Employees of the Comptroller's Office"). Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 72, I/A Court H.R., *Case of Acevedo Jaramillo et al v. Peru.* Judgment of February 7, 2006. Series C No. 144, para. 167.

[187] I/A Court H.R., *Case of Acevedo Jaramillo et al v. Peru*. Judgment of February 7, 2006. Series C No. 144, para. 220; I/A Court H.R., *Case of Baena Ricardo et al v. Panama.* Judgment of February 2, 2001. Series C No. 72*,* para. 82.

[188] Arguments of the IACHR at the I/A Court H.R., *Case of Acevedo Jaramillo et al v. Peru.* Judgment of February 7, 2006. Series C No. 144, para. 205. Also see IACHR, Report N° 110/00, Case 11.800, *César Cabrejos Bernuy,* Peru, December 4, 2000, paras. 31 and 33.

[189] I/A Court H.R., *Case of Acevedo Jaramillo et al.* Judgment of February 7, 2006. Series C No. 144, para. 219.

[190] See Application of the IACHR in the case of Mejía Idrovo vs. Ecuador, brought before the Inter-American Court on November 19, 2009.

[191] In its Admissibility Report, the IACHR held that: "[t]he Commission observes in this regard that a disagreement as to the quantity of compensation awarded by national courts acting in accordance with due process and within the sphere of their competence would not, in and of itself, provide a sufficient basis for an exercise of jurisdiction at the international level. The quantity of compensation awarded would, in principle, normally be a question for the judiciary of the state concerned."

133. With regard to the second aspect of the argument, that the State was ordered to pay the award in pesos, the IACHR notes that it is linked to the State's argument regarding Article 21 of the American Convention, and the reservation it formulated thereto at the time of ratification of said instrument.[192] The IACHR further recalls that the right to property is not part of the *litis* under examination in the instant case. With regard to this point, it must be clarified that the IACHR shall not analyze the means of payment as such; in other words, the decision to execute the sentence in the form of bonds. The Commission will analyze, however, whether the State -taking into account relevant circumstances with respect to the period of time necessary to cash them in its entirety in the instant case- was in compliance with the obligations enshrined in Article 25.2.c of the American Convention regarding enforcement of judgments.

134. And lastly, regarding the third component of the second argument, that is, the alleged difference between the amount of compensation awarded for damages and the amount received by the petitioner, the Commission notes that after weighing the injury inflicted on Sebastian as a result of unlawful acts of the State, the court determined within the scope of its jurisdiction that 130,000 pesos was the proper amount owed to him as reparation for damages, pain and suffering, plus interests and minus the appropriate percentage for legal fees and court costs. The petitioner received 34,126.09 pesos, from which a significant amount had to be subtracted to cover the 30% of the court costs and legal fees.

135. Regarding this point, the State asserts it was the decision of the petitioner himself to cash in the bonds prior to their maturity date (January 2016), fully aware that it would mean redeeming them below their nominal value. The IACHR also finds it important to stress that based on the established facts regarding the precarious economic situation of the petitioner, the urgency to provide care, assistance and treatment to his son, and the need to defray court costs and legal fees, it was not an option for him to wait until January 2016 to redeem the bonds at their nominal value.

136. In the same vein, the Commission recalls that the State has the obligation to ensure effective enforcement of court judgments, which in the instant case meant that if the petitioner wanted to avail himself of the full amount of reparation awarded by the court, he would have had to wait another 13 years until January 2016, in addition to the 12 years duration of the proceedings and execution of the judgment, that is, a total of 25 years, in order to be able to receive the full amount of court-ordered reparation. Based on the foregoing, and taking into account Sebastian's situation, as well as other circumstances in the case, the IACHR cannot deem the execution of judgment to be effective, given that it was significantly reduced below the original amount awarded for reparation.

137. In conclusion, the IACHR finds that the Argentine State violated the right established in Article 25.2.c of the American Convention, in conjunction with the general obligation set forth in Article 1.1, by not ensuring the timely, suitable and effective enforcement of the judgment and thus failing to effectively guarantee the right to reparation for Sebastian Furlan, to which he was entitled according to the judgment rendered in the domestic courts.

IACHR, Report 17/06, Petition 531-01, Admissibility, Sebastian Claus Furlan and Family, Argentina, March 2, 2006, para. 48.

[192] The reservation reads: "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 tribunal. Neither shall it be considered reviewable anything the national courts may determine to be a matter of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation'."

Regarding the interpretation and scope of said reservation, see IACHR, Report 40/06, Pedro Velázquez Ibarra, Argentina, March 15, 2006, paragraphs 43 to 47.

3. Right to personal integrity in relation to the rights of the child (Articles 5.1, 19 and 1.1 American Convention)

138. Article 5.1 of the American Convention establishes that every person is entitled to having his or her physical, mental, and moral integrity respected. Under the principle of *iura novit curia*, the IACHR deems it necessary to examine in the instant case, the infringement of the right to personal integrity provided for in Article 5.1, as a result of the unwarranted delay caused by the State in the context of the law suit, as noted by the Commission. It is further noted that given the link to the aforementioned violation established by the Commission regarding unwarranted delay in the proceedings, the IACHR finds that the facts are closely linked to the *litis* examined during the admissibility stage and, therefore, the State has had an opportunity to submit its arguments pertaining to this right. Based on the above reasoning, the IACHR hereunder explains its considerations on the merits regarding the rights established in Articles 5.1 and 19, in connection with Article 1.1 of the Convention.

139. In accordance with the obligation set forth in Article 1.1 of the American Convention, the State has the duty to respect the right to personal integrity and the duty to adopt the measures as may be necessary to ensure the free and full exercise of said right. This obligation goes even further when the person entitled to said right is a child, in keeping with Inter-American and international human rights standards. Regarding the rights of the child, Article 19 of the American Convention provides that "every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

140. In interpreting Article 19 of the American Convention, the bodies of the Inter-American System have turned to other sources of obligations in matters of the protection of children's human rights at the international level, particularly the United Nations Convention on the Rights of the Child.[193] The Inter-American Court has thus established that:

> Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention.[194]

141. Article 19 of the American Convention must be understood as a right that said treaty establishes for persons who, because of their physical and emotional development, require special protection measures.[195] Hence, the State accepts a special obligation of protection and guarantee with regard to children due to their special situation; one that goes beyond the general obligation set forth in Article 1.1 of the American Convention.

142. The IACHR has held that:

> Respect for the rights of children is a fundamental value of a society that claims to practice

---

[193] The Convention on the Rights of the Child approved by the United Nations General Assembly on November 20, 1989. This treaty is in force in Argentina: see Law 23.849 "*Apruébase la Convención sobre los Derechos del Niño*" approved on September 27, 1990 and enacted on October 6, 1990.

[194] I/A Court H.R., *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 37, 53 and I/A Court H.R., *Case of "The Street Children" (Villagrán Morales et al) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 194.

[195] IACHR, Report No. 43/08, Case No. 12.009, Merits, Leydi Dayán Sánchez, Colombia, July 23, 2008, para. 46, citing the I/A Court H.R., *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 54. Also see I/A Court H.R., *Case of "Juvenile Re-education Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 147.

> social justice and human rights. This does not only entail providing care and protection for children, (…) but it also additionally means recognizing, respecting, and guaranteeing the child's individual character, as the holder of rights and obligations.[196]

143. The Court has also held that the United Nations Convention on the Rights of the Child establishes that the obligations of States regarding children not only prevent States from unduly interferring with the exercise and enjoyment of their rights, but also require that States take positive measures to ensure the full exercise and enjoyment thereof by children, as circumstances may permit.[197]

144. Moreover, the Commission has interpreted States' special obligation of respect and guarantee vis-à-vis children, as provided in Article 19 of the American Convention, based on the specifics of the case and how their rights were infringed in their condition as minors.[198] The Court has also determined that instances of child victims of human rights violations are particularly serious;[199] and for this reason, these matters are governed by the principle of the best interests of the child, which 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 potential."[200]

145. It must also be stressed that the United Nations Committee on the Rights of the Child has affirmed that children with disability belong to one of the most vulnerable groups of children.[201] In this regard, the Commission takes into account the Interamerican Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (in force with respect to Argentina since January 10, 2001), which was adopted at the regional level with the objectives of preventing and eliminating all forms of discrimination against persons with disabilities and to promote their full integration into society.[202] At the International leve, the Convention on the Rights of Persons with Disabilities (in force with respect to Argentina since September 2, 2008) was adopted with the objectives of promoting, protecting, and ensuring the full and equal enjoyment of

---

[196] IACHR, Report No. 85/09, Case No. 11.607, Compliance Agreement, Victor Hugo Maciel, Paraguay, August 6, 2009, para. 136; IACHR, Report No. 43/08, Case 12.009, Merits, Leydi Dayán Sánchez, Colombia, July 23, 2008, footnote 53; IACHR, Report Nº 76/04, Gerardo Vargas Areco (Paraguay), Case 12.300, October 11, 2004, para. 70. IACHR, *Third Report on the Human Rights Situation in Colombia*, 1999, chpt. XIII, para. 1.

[197] I/A Court H.R., *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 August 28, 2002. Series A No. 17, para. 88.

[198] IACHR, Report Nº 76/04, Gerardo Vargas Areco, Paraguay, Case No. 12.300, October 11, 2004, para. 155.

[199] IACHR, Report No. 43/08, Case 12.009, Merits, Leydi Dayán Sánchez, Colombia, July 23, 2008, para. 49 citing the I/A Court H.R., *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 August 28, 2002. para. 54. Also see I/A Court H.R., *Case of "Juvenile Re-education Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 147.

[200] IACHR, Report No. 43/08, Case 12.009, Merits, Leydi Dayán Sánchez, Colombia, July 23, 2008, para. 49 citing the I/A Court H.R., *Case of the Massacre of Mapiripán v. Colombia*. Judgment of September 15, 2005, para. 152; and I/A Court H.R., *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 August 28, 2002. Series No. 17, para. 56.

[201] UN, Committee on the Rights of the Child, General Comment No. 9 (2006), "The Rights of Children with Disability," CRC/C/GC/9, February 27, 2007, para. 8. The IACHR has noted that "the existence of a *corpus juris* includes not only the text of the Convention on the Rights of the Child, but also the decisions adopted by the United Nations Committee on the Rights of the Child in pursuit of its mandate. That approach represents a significant step forward that indicates not only the existence of a shared legal framework in international human rights law as applicable to children but also the interdependence that exists at the international level among the different international systems for protecting children's human rights." IACHR Report on Corporal Punishment and Human Rights of Children and Adolescents, OAS/Ser.L/V/II.135 Doc. 14, August 5, 2009, para. 21.

[202] This Convention establishes that States Parties undertake to "work on a priority basis in the (…) areas of: (…) treatment, rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of independence and quality of life for persons with disabilities" (Article III).

all human rights and fundamental freedoms by all persons with disabilities, as well as promoting respect for their inherent dignity.

146. In the present case, the petitioner alleges that the ten-year delay for the court to rule on state responsiblity in the damages suit brought against the Army General Staff, obstructed the way for obtaining prompt reparation to furnish him with adequate means to make it possible to provide his minor son with adequate, timely and early rehabilitation. The IACHR further notes that when the complaint was filed bringing suit in December 1990, Sebastian, who was born on June 6, 1974, was 16 years old, and by the time final judgment was rendered in the suit on November 23, 2000, Sebastian was 26 years old. It must also be mentioned that, based on established facts, the record shows the petitioner could not actually receive the court-ordered damages award until more than two years later, when Sebastian was 28 years old. The established facts in the instant case show how important it is, in instances of child brain injury, for the injured child to receive prompt and timely rehabilitation, inasamuch as early rehabilitation helps the injured child to achieve a result of greater functionality.

147. Furthermore, in keeping with the parameters of Article 19 of the American Convention, the IACHR finds that during the first two years of the proceedings, while the victim was a minor, the State had a higher degree of responsibility and a special duty to ensure the free and full exercise of his right to personal integrity, in accordance with obligations emanating from Inter-American and international standards. The Commission also finds that the State ought to have taken the necessary measures so that the proceedings moved forward at a faster pace, taking into account not only the best interests of the child, but also the adverse effect on Sebatian's physical and psychological integrity stemming from the passage of time over the course of the proceedings, thus delaying reparation and thereby prompt, adequate and timely physical, psychological and psychiatric rehabilitation.

148. Moreover, it must be noted that the only intevention of the Office of Juvenile Assistance as evidenced in the court case file of these proceedings is the written brief dated October 29, 1996 indicating that because Sebastian had reached adult age, it was no longer the reponsibility of said entity to represent him.[203] No record appears in the case file regarding any involvement whatsoever of said institution prior to that point in the court proceedings. The IACHR further finds that the delay in the court proceedings may have had a bearing on the failure of that institution to get involved on behalf of Sebastian, which placed him in a defenseless and vulnerable position.

149. Based on the foregoing reasons, the IACHR finds that the effects that the unwarranted delay in the suit had on Sebastian, who was in a situation of particular vulnerability, inasmuch as he was 14 years old at the time of the accident and had severe physical and mental disability, constitute a separate violation of his right to personal integrity (Article 5.1) and the rights of the child (Article 19), in connection with the general obligation to ensure the full exercise of the human rights (Article 1.1), set forth in the American Convention.

150. Lastly, the IACHR recalls that according to the established jurisprudence of the bodies of the Inter-American system, the next of kin of human rights victims can be considered victims as well.[204] In the instant case, the Commission notes that the delay in the process

---

[203] On said occasion as well, the Office of Juvenile Assistance accepted representation of Sebastian's sister and brother because they were minors. Case proceedings file titled "Furlan Sebastian Claus v. National State for Damages," page 55. Annex to communication from the State received on October 15, 2008.

[204] I/A Court H.R., *Case of Bueno Alves v. Argentina*. Judgment of May 11, 2007. Series C. No. 164, para. 102; I/A Court H.R., *Case of Miguel Castro Castro Prison v. Peru.* Judgment of November 25, 2006. Series C No. 160, para. 335; I/A Court H.R., *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 83, and I/A Court H.R., *Case of Goiburú et al v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 96.

protracted the emotional distress of Sebastian's father, mother, brother and sister and, therefore, the Commission finds that their right to psychological and moral integrity, as provided in Article 5.1 of the American Convention, was violated.

VIII. CONCLUSIONS

151. The Inter-American Commission concludes that the Argentine State is responsible for violation of the following rights enshrined in the American Convention:

- right to be heard within a reasonable time (Article 8.1) and judicial protection (Article 25.1), in conjunction with the general obligation to ensure human rights (Article 1.1), to the detriment of Sebastian Claus Furlan and Danilo Furlan. Additionally, the right to judicial protection (Article 25.2.c), in connection with Article 1.1, to the detriment of Sebastian Furlan;

- right to personal integrity (Article 5.1) and the right of the child (Article 19), in conjunction with the general obligation to ensure human rights (Article 1.1), to the detriment of Sebastian Claus Furlan, who suffered from a permanent disability due to an accident when he was 14 years old; and

- right to personal integrity (Article 5.1) to the detriment of Sebastian's immediate family members, to wit: his father (Danilo Furlan), his mother (Susana Fernandez), his brother (Erwin Furlan) and his sister (Sabina Eva Furlan).

IX. RECOMMENDATIONS

152. Based on the foregoing analysis and conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE ARGENTINE STATE TO:

1. Provide full reparation to Sebastian Claus Furlan and his family for the violations of the human rights established in this report, taking into account the consequences caused by the unwarranted delay in the judicial proceedings, and that such reparation be effective taking into account that Sebastian suffers from a permanent disability.

2. Ensure that Sebastian, who at the time of the accident was 14 years old, has access to medical and other types of treatment at specialized and quality treatment centers, or the means to gain access to said care at private centers.

3. As a measure of non repetition, take the necessary actions to make sure that law suits against the State for damages relating to the right to personal integrity of children comply with due process of law and judicial protection, particularly, the right to be heard within a reasonable time.

4. The Commission agrees to forward this report to the Argentine State and grant it a period of two months to implement the recommendations established herein. This period is counted from the date of transmission of this report to the State. The Commission also agrees to notify the petitioner of approval of this report pursuant to Article 50 of the Convention.