

**ORDER OF THE PRESIDENT OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF JANUARY 24, 2012  
CASE OF FURLAN AND FAMILY v. ARGENTINA**

**HAVING SEEN:**

1. The brief of March 15, 2011, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") a case against the Argentine Republic (hereinafter "Argentina" or "the State"). In its brief, the Commission indicated the name of one of the expert witnesses and the purpose of the two proposed expert opinions.
2. The brief of March 31, 2011, and its attachments, whereby the Inter-American Commission provided the name of one of the expert witnesses offered in its brief submitting the case, and forwarded the curricula vitae of the two proposed expert witnesses.
3. The brief with pleadings, motions and evidence (hereinafter "the pleadings and motions brief") filed by the representatives of the presumed victims<sup>1</sup> (hereinafter "the representatives") on July 26, 2011, in which they offered five statements and four expert opinions. In addition, they requested, on behalf of the presumed victims, to access the Victims' Legal Assistance Fund of the Inter-American Court, (hereinafter "the Victims' Assistance Fund", "the Assistance Fund" or "the Fund") for the "defense in the international proceedings [and] for the expenses occasioned by the intervention of the inter-American defenders," aspects that were described and regarding which supporting documentation was attached.
4. The communication of August 10, 2011, and its attachments, with which the representatives forwarded the curricula vitae and the contact information of the four proposed expert witnesses.
5. The brief with preliminary objections, answering the application, and with observations on the pleadings and motions brief (hereinafter "the answer to the

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<sup>1</sup> Danilo Furlan, on behalf of Sebastián Furlan and his family, appointed the inter-American defenders María Fernanda López Puleio and Andrés Mariño as their representatives.

application") presented on October 28, 2011, by Argentina, in which it did not offer deponents. In addition, the State contested an expert opinion proposed by the representatives.

6. The Order of the President of the Court (hereinafter "the President") of November 23, 2011, regarding the presumed victims' request to access the Victims' Assistance Fund (*supra* having seen paragraph 3).

7. The briefs of December 9 and 10, 2011, whereby the representatives and the Inter-American Commission, respectively, presented their observations on the preliminary objections filed by the State.

8. The notes of the Secretariat of November 25, 2011, in which, on the instructions of the President of the Court and in accordance with Article 46(1) of the Rules of Procedure of the Court applicable to this case<sup>2</sup> (hereinafter "the Court's Rules of Procedure" or "the Rules of Procedure"), it asked the representatives and the Inter-American Commission to forward, by December 2, 2011, at the latest, their respective definitive lists of deponents in order to schedule the public hearing on the preliminary objections and possible merits, reparations and costs in the instant case. In addition, for reasons of procedural economy, they were asked to indicate which deponents could provide their testimony by affidavit, and which should be called to testify at the public hearing.

9. The brief of December 9, 2011, in which the Inter-American Commission, having been granted the extension requested, presented its definitive list of deponents. The Commission confirmed the offer of the two proposed expert witnesses (*supra* having seen paragraphs 1 and 2) and asked that both be called to testify at the public hearing.

10. The brief of December 2, 2011, in which the representatives forwarded their definitive list of deponents and presented observations on the objection to the evidence presented by the State (*supra* having seen paragraph 5). The representatives abstained from offering one expert witness<sup>3</sup> and confirmed the other testimonies and expert opinions offered (*supra* having seen paragraph **¡Error! No se encuentra el origen de la referencia.**). In addition, they indicated who could provide their testimony by affidavit and who they considered should be called to testify at the public hearing.

11. The Secretariat's notes of December 9, 2011, with which it forwarded the definitive lists to the parties and informed them that they had until December 19, 2011, to present any observations they deemed pertinent.

12. The brief of December 19, 2011, in which the Inter-American Commission indicated that it had no observations to make on the definitive list of deponents presented by the representatives. In addition, the Commission asked that it be allowed to pose questions to the two expert witnesses proposed by the representatives.

13. The Secretariat's note of December 21, 2011, with which the observations presented by the Commission were forwarded (*supra* having seen paragraph 12), placing on record

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<sup>2</sup> Rules of Procedure approved by the Court at its eighty-fifth regular session, held from November 16 to 28, 2009.

<sup>3</sup> The representatives indicated that "since the testimony of Dr. Alejandro Morlachetti, an expert witness offered by the Inter-American Commission" concurs "substantially with the testimony of Dr. Pablo Oscar Corrales, proposed by this party," they had decided "to abstain from offering his testimony in the instant case."

that the representatives and the State had not presented observations on the definitive lists of deponents forwarded by the representatives and the Inter-American Commission.

**CONSIDERING THAT:**

1. The offer and the admission of evidence, as well as the convening of presumed victims, witnesses and expert witnesses are regulated in Articles 35(1)(f), 40(2)(c), 41(1)(c), 42(2), 46(1), 50, 57 and 58 of the Court's Rules of Procedure.

2. The Commission proposed the admission of two expert opinions. The representatives offered as evidence the testimony of three presumed victims, two witnesses and four expert witnesses. The evidence offered by the Commission and the representatives was indicated at the appropriate procedural opportunity. The State did not present testimonial or expert evidence (*supra* having seen paragraphs 1, 2, 3 and **¡Error! No se encuentra el origen de la referencia.**).

3. The parties have been given the right of defense with regard to the evidence offered by each of them in their briefs submitting the case and with pleadings and motions, and in their definitive lists of deponents (*supra* having seen paragraphs 1, 2, 3, 5 and 10).

4. The Commission indicated that it had no observations to make on the statements and expert opinions offered by the representatives (*supra* having seen paragraph 12). For its part, the State and the representatives did not present observations on the Commission's definitive lists (*supra* having seen 13).

5. With regard to the statements and expert opinions offered by the representatives that have not been contested, the President considers it appropriate to admit the said evidence so that the Court can assess its usefulness at the appropriate procedural opportunity, within the context of the existing body of evidence and according to the rules of sound judicial discretion. This refers to the statements of two presumed victims: Claudio Furlan and Danilo Pedro Furlan; the testimony of two witnesses: María Teresa Grossi and Violeta Florinda Jano, and the opinions of two expert witnesses: Estela del Carmen Rodríguez and Gustavo Daniel Moreno. The purpose of these statements and the way in which they will be received are determined in the operative paragraphs of this Order (*infra* first and fifth operative paragraphs).

***a) Statement of a presumed victim attached to the pleadings and motions brief***

6. In the section entitled "testimonial evidence" included in its pleadings and motions brief, the representatives indicated that "due to the difficulties and anguish that Sebastián Furlan experiences when talking about the accident and other aspects related to the trauma he suffered when he was 14 years old, and in order to avoid further victimization," they asked the Court to "receive Sebastián's statement which was forwarded by video" with one of the attachments to the said brief. This attachment was forwarded to the Commission and to the State, neither of which made any observations on it.

7. When presenting their definitive list of deponents, the representatives asked that the above-mentioned statement be received "in the video that had been duly forwarded." Neither the Commission nor the State presented observations contrary to the ratification of this proposal.

8. The Court notes that the said statement is now documentary evidence, and, in this regard, it will be assessed at the appropriate opportunity, within the context of the existing body of evidence and in accordance with the rules of sound judicial discretion.<sup>4</sup>

***b) Objection to the expert evidence presented by the representatives***

9. The State contested the expert opinion of María Laura Subies, proposed by the representatives. The State argued that “the characteristics” of “the expert opinion” of Ms. Subies “are those of a testimony more than that of an expert opinion.” In this regard, the State indicated that the purpose of Ms. Subies’ testimony related “to her experience as the mother of a child with mental disabilities, as regards the possibility of coverage for children with disabilities by the public health care and social assistance systems, describing the situations experienced by parents who have to deal with these institutions, and the responses of the State as regards information about assistance.” The State indicated that “the fact that Ms. Subies is a lawyer does not change this position, because she has been summoned based on her personal experience as the mother of a child with disabilities.”

10. The representatives argued that the State “completely distorts the purpose of the expert opinion proposed” for Ms. Subies “based on her professional role as a lawyer with expertise in the area of disabilities, as [her] curriculum vitae clearly shows.” They added that an “expert witness is someone who, owing to his or her scientific knowledge and/or experience, can provide the Court with information that is useful for understanding any aspect of the case which may demand expert knowledge, qualities that distinguish and describe the testimony of Ms. Subies.”

11. The President observes that the proposed purpose of the expert opinion of Ms. Subies is twofold. First, the representatives propose that “based on her role as a litigation lawyer in the area of disabilities, [she refer to] decision mechanisms and court practices in cases processed by the courts with the same territorial and subject-matter jurisdiction as the one that intervened in the damages proceedings relating to Sebastian Furlan’s accident.” Second, it is proposed that she refer “to her experience as the mother of a mentally disabled child, with regard to the possibilities of public health care and social security coverage for children with disabilities, describing the situations experienced by parents who have to deal with these institutions, and the State’s responses as regards information on assistance.”

12. Based on the above, and having analyzed the purpose of the expert opinion, the President finds that it can help to clarify the facts of this case. With regard to her role as an expert witness, the State does not argue that Ms. Subies had previously taken part in the domestic judicial proceedings or in other aspects of the instant case. Regarding the allegations concerning Ms. Subies’ experience as the mother of a child with disabilities, the President finds that it has not been substantiated that this circumstance means that Ms. Subies has a direct interest in or that she will in some way benefit from the decision in this case and is therefore barred from participating in the capacity proposed under Article 19 of the Statute. In point of fact, expert witnesses are not barred from using their personal experiences as part of their technical presentation. The strengths or weaknesses that this may create in terms of reaching duly documented conclusions on the purpose for which they are convened is an issue that corresponds to the merits of the case. The Court will assess the usefulness of the said testimony, as well as the respective observations of the parties at the appropriate opportunity, in the context of the existing body of evidence and according

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<sup>4</sup> Similarly, see *Case of Abrill Alosilla et al. v. Peru*. Order of the acting President of the Inter-American Court of Human Rights for that case of September 8, 2010, considering paragraph 24.

to the rules of sound judicial discretion. Based on the foregoing, the President finds it appropriate to admit the said evidence and will determine the purpose of the expert opinion, in the operative paragraphs of this Order (*infra* operative paragraph 5).

**c) Expert evidence offered by the Inter-American Commission**

13. Under Article 35(1)(f) of the Rules of Procedure, the Inter-American Commission can decide on the “possible appointment of expert witnesses” “when the inter-American public order of human rights is affected in a significant manner,” and the grounds and purpose must be adequately founded. This provision means that the designation of expert witnesses by the Commission is exceptional, and is subject to the said requirement, which is not met merely because the expert opinion that it is intended to provide relates to an alleged human rights violation. The “inter-American public order of human rights” must be “affected in a significant manner,” and the Commission must substantiate this situation.<sup>5</sup>

14. In the instant case, the Commission offered the expert opinion of Hernán Gullco to testify on “the Argentine legal framework that regulates civil actions against the State, the procedural stages and time frames, including the execution of a favorable judgment ordering the State to make reparation.” The Commission added that “the expert opinion will refer to whether a prompt or differentiated treatment is provided under the said proceedings when the interests at stake require a response in order to protect fundamental rights.” In addition, the expert witness will refer to “the main problems that result in the delay in the decisions and in the implementation of any reparations ordered in light of the State’s international obligations.”

15. The Commission underlined that this expert opinion is related to inter-American public order, because, “apart from describing the situation in Argentina, it will provide essential information about the main problems that lead to delays in judicial decisions and in the implementation of any reparations ordered in light of the State’s international obligations,” and “will provide information about the principles of effective judicial protection and the remedies the courts can adopt in the proceedings in order to assure the effective enjoyment of rights.” The Commission indicated that “these standards go beyond the situation of the victims in the instant case, and can have an impact on how similar situations in other States of the region are addressed,” while permitting the establishment of “more specific standards” with regard to the matter that is the purpose of the expert opinion.

16. The President notes that the purpose of the proposed expert opinion concerns civil procedural regulations in Argentina; in particular the procedural stages and the execution of judgments in that country. The said purpose is limited to the particular situation of Argentina and, consequently, it is not related to inter-American public order. Therefore, the expert opinion of Hernán Gullco, offered by the Inter-American Commission based on effects on the inter-American public order, is not admissible.

17. Nevertheless, the purpose of the testimony of the said expert witness could provide the Court with useful information for examining the case submitted to its consideration with regard to civil actions against the State and the execution of judicial decisions in Argentina. Consequently, based on the provisions of Article 58(a) of the Court’s Rules of Procedure, the

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5 Cf. *Case of Vera Vera et al. v. Ecuador*. Order of the President of the Court of December 23, 2010, ninth considering paragraph; *Case of Torres et al. v. Argentina*. Order of the President of the Court of April 29, 2011, eighth considering paragraph, and *Case of the Barrios Family v. Venezuela*. Order of the President of the Court of June 1, 2011, seventh considering paragraph.

President finds it pertinent to establish, *ex officio*, that Hernán Gullco's expert opinion be received. The Court will assess the usefulness of this expert opinion at the appropriate opportunity, in the context of the existing body of evidence and according to the rules of sound judicial discretion. The purpose and the way in which the expert opinion will be received is determined in this Order (*infra* first operative paragraph).

18. The Commission also offered the expert opinion of Alejandro Morlachetti to testify on "the international standards for the judicial protection of children with disabilities and the special measures that must be adopted when the result of the judicial proceedings relates to their right to personal integrity." The Commission indicated that the expert opinion will also refer to "the application of the said standards to the facts of the case."

19. The Commission indicated that this expert opinion is related to inter-American public order, because "it does beyond the scope of the victims in the case" and "will permit an analysis of the case from the perspective of the rights of children with disabilities" and contribute to the application of the said standards at the domestic level.

20. With regard to the proposed purpose of Mr. Morlachetti's expert opinion, the President considers that it goes beyond the interest and purpose of this case and addresses aspects, such as the rights of children with disabilities, which are new matters in litigations before the Inter-American Court and that are relevant to inter-American public order. Based on the foregoing, the President finds it appropriate to admit the expert opinion of Mr. Morlachetti, in accordance with the purpose and the way in which it will be received determined in the operative paragraphs of this Order (*infra* fifth operative paragraph).

#### ***d) Method of presentation of the statements and expert opinions***

21. It is necessary to arrive at the truth and to ensure the most extensive presentation of facts and arguments by the parties as regards everything that is pertinent to decide the matters in dispute, guaranteeing them the right to defend their respective positions. At the same time, the Court's ability to adequately examine the cases submitted to its consideration must be guaranteed, bearing in mind that their number has increased considerably and is growing constantly. In addition, a reasonable time must be ensured for the duration of the proceedings, as required by effective access to justice. Based on the foregoing, the greatest possible number of testimonies must be received by affidavit, and the presumed victims, witnesses and expert witnesses, whose direct statements are truly essential, must be heard in a public hearing, taking into consideration the circumstances of the case and the purpose of the testimonies and opinions.

#### ***d.1) Testimony and expert opinions to be given by affidavit***

22. Taking into account the provisions of Article 50(1) of the Rules of Procedure, the observations of the parties with their definitive lists of deponents, the purpose of the testimony offered and its relationship to the facts of the case, as well as the principle of procedural economy, the President finds it desirable to receive, by affidavit, the following statements and expert opinions: the statement of the presumed victim Danilo Pedro Furlan, proposed by the representatives; the testimony of María Teresa Grossi and Violeta Florinda Jano, proposed by the representatives; the expert opinion of Estela del Carmen Rodríguez, proposed by the representatives, and the expert opinion of Hernán Gullco, initially proposed by the Commission and ordered *ex officio* by the President. The President underlines that Article 50(5) of the Court's Rules of Procedure, applicable to the instant case, establishes the possibility that the presumed victims or their representatives and the defendant State

may provide a list of questions to ask those persons called upon to provide affidavits. In addition, in order to provide his expert opinion, Hernán Gullco, convened *ex officio* by the President, must forward the Court an estimate of the cost of preparing an affidavit in Argentina and forwarding it, within the time frame established in the operative paragraphs of this Order (*infra* first operative paragraph).

23. Under the provisions of the said Rules of Procedure, the President proceeds to grant the State an opportunity to submit, if it so wishes, any questions it deems pertinent to the deponents and the expert witnesses mentioned in the preceding paragraph. When preparing their affidavits, the deponents must respond to these questions, unless the President rules otherwise. The corresponding time frames will be established *infra*, in the first and second operative paragraphs of this Order. The said statements and expert opinions will be forwarded to the Commission and to the State. In turn, the Commission and the State may present any observations they deem pertinent within the time frame indicated in the operative paragraphs of this Order (*infra* fourth operative paragraph). The Court will determine the probative value of the said statements at the appropriate opportunity, taking into account the points of view of the parties in exercise of their right to defense, if applicable.

***d.2) Statements and expert opinions to be received at the hearing***

24. The instant case is ready for the opening of the oral proceedings regarding the preliminary objections and possible merits, reparations and costs. Consequently, the President deems it pertinent to convene a public hearing in order to receive the following four statements: the statement of the presumed victim, Claudio Furlan; the expert opinion of Gustavo Daniel Moreno and of María Laura Subies, proposed by the representatives, and the expert opinion of Alejandro Morlachetti, proposed by the Commission. The Court will also receive the final oral arguments of the representatives and the State, and the final oral observations of the Commission.

***d.3) The Commission's request to pose questions to the two expert witnesses proposed by the representatives***

25. The Commission asked "to be able to question Gustavo Daniel Moreno, whose expert opinion addresses issues of inter-American public interest," and who will refer, among other matters, "to the civil and commercial proceedings of the domestic judicial system, the decision-making power of the judges in the procedural system, to when a case for damages can be considered complex, and the usual time it takes to process such cases." In this regard, the Commission asked whether it could question the said lawyer specifically about "those issues directly related to the purpose of the expert opinion of Hernán Gullco; namely, the main problems that lead to delay in the decisions and in the implementation of reparations ordered in light of the State's international obligations, and to the expert opinion of Alejandro Morlachetti." The Commission considered that "Mr. Moreno will provide information about the interrelationship between the said international standards and their application at the domestic level."

26. Regarding the Commission's request, the President recalls the restrictions established in the Rules of Procedure currently in force with regard to the reception of testimony proposed by the Commission, as well as in relation to its prerogative to question the deponents offered by the other parties.<sup>6</sup>

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<sup>6</sup> Cf. *Case of González Medina and Family v. Dominican Republic*. Order of the President of the Inter-American Court of Human Rights of June 3, 2011, forty-fourth considering paragraph.

27. Specifically, it is pertinent to recall the provisions of Article 50(5) of the Rules of Procedure, which establish that “the alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State may formulate questions in writing for the declarants offered by the opposing party and, if applicable, by the Commission who have been convened by the Court to render their statements by affidavit,” which must be read in conjunction with Article 52(3) of the Rules of Procedure, which establishes the possibility that the Commission may examine the expert witnesses presented by the other parties, “if authorized by the Court upon receiving a well-grounded request therefor, when the inter-American public order of human rights is affected in a significant manner and the statement in question regards a topic included in the statement of an expert witness offered by the Commission.” Thus, in each case, the Commission must substantiate the connection to both inter-American public order, and the subject-matter of an expert opinion it is offering, so that the Court or its President can assess the request opportunely and, if appropriate, authorize the Commission to pose questions.

28. The President observes that some aspects of the connection between the request to pose questions and inter-American public order are related to the purpose of the expert opinion of Hernán Gullco, proposed by the Commission. In this regard, the President reiterates his previous considerations when ruling that the said expert opinion was inadmissible, that its purpose does not appear to encompass information, knowledge or parameters relating to the protection of human rights that could have a relevant effect on inter-American public order. The President refers to the considerations expressed *supra* in this regard, and finds that it is not appropriate to analyze this aspect of the Commission’s request.

29. With regard to the relationship between the proposed expert opinion of Mr. Moreno and the purpose of Alejandro Morlachetti’s expert opinion, the President finds that the purpose of Mr. Moreno’s expert opinion relates to domestic law on civil and commercial procedure, which does not relate to inter-American public interest; consequently, the Commission’s request to pose questions to expert witness Moreno is not admissible.

30. The Commission also asked to question María Laura Subies with regard to the decision mechanisms and practices [of the courts]” in cases related to children with disabilities, given that “her expert opinion will refer to matters of inter-American public interest, particularly to some points included in Mr. Morlachetti’s expert opinion.”

31. Regarding the relationship between the expert opinions of Ms. Subies and Mr. Morlachetti, the President emphasizes his considerations with regard to the purpose of Mr. Morlachetti’s opinion to the effect that it relates to inter-American public order (*supra* considering paragraph 20). From comparing the purposes of the two expert opinions, the President concludes that both of them analyze relevant aspects of the rights of children with disabilities; thus, in accordance with Articles 50(5) and 52(3), the Commission may pose questions to expert witness Subies, whose expert opinion will be received at the public hearing, given that the said questions could be relevant to inter-American public order.

#### **e) Use of the Assistance Fund**

32. The Order issued by the President on November 23, 2011 (*supra* having seen paragraph 6), declared the request filed by the inter-American defenders to access the Victims’ Legal Assistance Fund of the Inter-American Court admissible. Accordingly, he declared that the required financial assistance would be granted to cover the reasonable and necessary costs that had been and would be authenticated by the defenders in order to

process the case before the Court, and the specific amount, use and purpose of the said assistance would be specified when deciding on the production of the expert and testimonial evidence and, if appropriate, the opening of the oral proceedings.

33. Having determined that the Court will receive the testimony offered by the Inter-American defenders, as well as the way in which it will be received, the specific allocation and purpose of this assistance must now be specified.

34. In this regard, the President establishes that financial assistance will be allocated to cover travel and per diem expenses so that the two inter-American defenders (María Fernanda López Puleio and Andrés Mariño), Claudio Furlan, Gustavo Daniel Moreno and María Laura Subies can appear at the seat of the Court and testify at the public hearing to be held in this case. In addition, financial assistance will be provided to cover the costs of the preparation and sending of the affidavits, as established in the first operative paragraph of this Order. Lastly, financial assistance will be provided to cover the total amount of the expenses authenticated to date by the inter-American defenders. The other necessary and reasonable costs that the inter-American defenders may incur in the future will also be covered; to this end, they must submit the pertinent documentation to the Court.

35. The inter-American defenders must send the Court an estimate of the cost of preparing an affidavit in Argentina and forwarding it, within the time frame established in the operative paragraphs of this Order. In the case of the inter-American defenders and those who will appear at the public hearing, the Court will take the pertinent and necessary measures to cover the cost of their travel, accommodation and per diem with resources from the Victims' Assistance Fund.

36. Article 4 of the Rules for the Operation of the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "the Rules of the Assistance Fund") stipulates that the Secretariat must open a file of expenses in order to account for and document each expenditure related to the Fund.

37. Lastly, the President recalls that, in accordance with Article 5 of the Rules of the Fund, the defendant State will be informed of the expenditures made from the Legal Assistance Fund at the appropriate opportunity, so that it may submit observations, if it so wishes, within the time frame established for this purpose.

***f) Final oral and written arguments and observations***

38. The representatives and the State may submit to the Court their respective final oral arguments on the preliminary objections and possible merits, reparations and costs in this case following the conclusion of the testimony. As established in the Rules of Procedure, when the arguments have concluded, the Inter-American Commission will present its final oral observations.

39. Under Article 56 of the Rules of Procedure, the representatives, the State, and Commission may present their final written arguments and final written observations, respectively, with regard to the preliminary objections and possible merits, reparations and costs, within the time frame established in operative paragraph 13 of this Order.

**THEREFORE:**

**THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in accordance with Articles 24(1) and 25(2) of the Statute of the Court, Article 34 of the Rules of Procedure previously in force, and Articles 4, 15(1), 26(1), 31(2), 35(1), 40(2), 41(1), 45, 46, 48, 50 to 56, 58 and 60 of the Court's Rules of Procedure, as well as with the Rules for the Operation of the Victims' Legal Assistance Fund,

## **DECIDES:**

1. To require, for the reasons given in this Order (*supra* considering paragraphs **¡Error! No se encuentra el origen de la referencia.** to 23), in accordance with the principle of procedural economy and in exercise of the authority vested in him under Article 50(1) of the Court's Rules of Procedure, that the following persons provide their statements by affidavit: **¡Error! No se encuentra el origen de la referencia.**

### **A) Presumed victim**

#### Proposed by the representatives:

- 1) Danilo Pedro Furlan, father of Sebastián Claus Furlan, who will testify on the events following Sebastián's accident, specifically: (i) "the processing of the damages case file and other circumstances relating to the treatment received from the State authorities, from the day of [Sebastián Furlan's] accident to the present;" (ii) the alleged "consequences that the delay in the judicial proceedings and the deferment of the pecuniary compensation ordered had on Sebastián and his family," and (iii) "the past and present living conditions of all the members of the Furlan family."

### **B) Witnesses**

#### Proposed by the representatives:

- 1) María Teresa Grossi, director of the technical high school in which Sebastián Claus Furlan was studying at the time of his accident, will testify on the alleged "impact that the accident had on Sebastián as a person, and on his performance, behavior and social life in school," and
- 2) Violeta Florinda Jano, neighbor of the Furlan family at the time of the accident and during the following years, who will testify on the alleged "impact that the accident and the prolonged quest to obtain assistance had on Sebastián Furlan and his family"; specifically, "the changes in the relationship between Sebastián and his family, their living conditions before and after the accident, and the [presumed] consequences for the family members of the event and the absence of a State response to their different requests."

### **C) Expert witnesses**

#### Proposed by the representatives:

- 1) Estela del Carmen Rodríguez, doctor specializing in child neurology, who will give an expert opinion "based on the mechanics of the accident, all the medical records, official expert appraisals and expert reports, and other evidence related to the case" with regard to: (i) the alleged "consequences of an accident such as the one suffered by Sebastián Furlan, its relationship to the treatments received, the effect of the passage of time, and the relationship with rehabilitation alternatives for patients in

cases such as this one;" (ii) "the objectives of those treatments, costs and conditions for carrying them out at that time, in the Argentine context;" (iii) "services provided by the public health care system and by private treatment during the years that the proceedings for damages were being processed;" (iv) the alleged consequences of complying with the treatments ordered by the official expert appraisals in the case processed in the federal civil and commercial court of the city of Buenos Aires," and (v) the hospital standards, protocols and decisions concerning the right to information and other assistance that must be provided in cases of persons or children with disabilities, the tabulation of percentages of disability, and medical requirements for certifying a disability."

Ordered ex officio by the President:

- 2) Hernán Gullco, who will testify on: (i) "the Argentine legal framework that regulates civil actions against the State, procedural stages and time frames, including the execution of a favorable decision ordering the State to make reparation;" (ii) "if the said proceedings provide for a rapid or differentiated treatment when the interests at stake require a response in order to protect fundamental rights," and (iii) "the main problems that lead to a delay in the decisions and in the implementation of reparations ordered in light of the State's international obligations."

2. To require the State to forward, if it considers it pertinent for the corresponding effects, and within the non-extendible time frame expiring on February 6, 2012, the questions it deem pertinent to pose, through the Inter-American Court, to the presumed victim, witnesses and expert witnesses indicated in the first operative paragraph of this Order. The statements and expert opinions required in the first operative paragraph must be submitted to the Court by February 14, 2012, at the latest.

3. To require the representatives and the Secretariat of the Court to coordinate and take the necessary steps to ensure that, when the State's questions have been received, the proposed deponents and expert witnesses include the respective answers in their statements provided by affidavit, in accordance with considering paragraphs 22 and 23 of this Order.

4. To establish that, when the statements and expert opinions required in the first operative paragraph have been received, the Secretariat of the Inter-American Court must forward them to the other parties so that they may present their observations on these statements and expert opinions by February 24, 2012, at the latest.

5. To convene the representatives, the State and the Inter-American Commission to a public hearing to be held at the seat of the Court during its ninety-fourth regular session, on February 27, 2012, starting at 9 a.m., and on February 28, 2012, starting at 9 a.m., in order to receive their final oral arguments and final oral observations, respectively, on the preliminary objections and the possible merits, reparations and costs, as well as the statements of the following persons:

**A) Presumed victim proposed by the representatives**

- 1) Claudio Furlan, brother of Sebastián Claus Furlan, who will testify on: (i) "the circumstances of manner, time and place related to his brother's accident, and the [alleged] impact that this had on Sebastián's personal life and relationships, his studies and his work;" (ii) the alleged "consequences of the accident on the members of his family;" (iii) the "different vicissitudes in the life of his brother and

his nephews," (iv) the "measures and steps taken in relation to claims and requests concerning Sebastián's health, medical and psychological treatment, and access to social security," and (v) the alleged "lack of judicial protection and deferment of compensation, and how this affected the life of his family."

**B) Expert witnesses proposed by the representatives**

- 1) María Laura Subies, who will testify about: (i) "decision mechanisms and practice of the courts in cases processed by courts with the same territorial and subject-matter jurisdiction as the court that intervened in the proceedings for damages as a result of Sebastian Furlan's accident;" (ii) "the possibilities of public health care and social security coverage for children with disabilities," and (iii) "the State's response with regard to information on assistance," and
- 2) Gustavo Daniel Moreno, who will testify about: (i) "the institution of the defender of children and those lacking legal capacity under Argentine law in the case law of the Supreme Court, and in the practice of the courts;" (ii) "the proceedings in which the said institution intervenes to protect economic, social and cultural rights, and its extra-judicial actions;" (iii) the "role of the Advisor for minors and those lacking legal capacity in light of the obligations of special protection imposed by the American Convention on Human Rights and the Convention on the Rights of the Child;" (iv) "civil and commercial proceedings under the domestic system of justice;" (v) "the decision-making powers of the judges under the procedural system;" (vi) when a case for damages can be considered complicated, and (vii) the usual time required to process such cases.

**C) Expert witness proposed by the Commission**

- 1) Alejandro Morlachetti, who will testify about: (i) "the international standards for the judicial protection of children with disabilities and the special measures that must be taken when the result of a litigation relates to their right to personal integrity," and (ii) "the application of these standards to the facts of the case."

6. To require the State to facilitate the exit from and entrance to its territory of the deponents, if they reside or are in its territory, who have been summoned in this Order to testify at the public hearing on the preliminary objections and possible merits, reparations and costs in this case, in accordance with the provisions of Article 26(1) of the Court's Rules of Procedure.

7. To require the representatives, the State, the Inter-American Commission, and the Secretariat of the Court to notify this Order to the persons they have proposed, and to the expert witness established *ex officio* by the President, respectively, who have been summoned to testify, in accordance with the provisions of Article 50(2) and 50(4) of the Rules of Procedure.

8. To inform the representatives and the Inter-American Commission that they must cover the costs of providing or producing the evidence they have proposed, in accordance with the provisions of Article 60 of the Rules of Procedure.

9. To require the representatives and the expert witness, Hernán Gullco, convened *ex officio* by the President, to forward to the Court an estimate of the cost of preparing an affidavit in Argentina and forwarding it to the Inter-American Court of Human Rights, as well as the other vouchers for pertinent expenses, by February 7, 2012, at the latest.

10. To require the representatives, the State, the Inter-American Commission, and the Secretariat of the Court to inform the deponents summoned to testify by the Court that, under the provisions of Article 54 of the Rules of Procedure, the Court will advise the State if the persons summoned to appear or to testify, fail to appear or refuse to testify without a legitimate reason or if, in the Court's opinion, they have violated their oath or solemn declaration, so that appropriate action may be taken under the corresponding domestic law.

11. To inform the representatives, the State, and the Inter-American Commission that, when the statements rendered during the public hearing have concluded, they may present to the Court their final oral arguments and final oral observations, respectively, on the preliminary objections and possible merits, reparations and costs in the instant case.

12. To require the Secretariat of the Court, in accordance with the provisions of Article 55(3) of the Rules of Procedure, to forward to the representatives, the State, and the Inter-American Commission a copy of the recording of the public hearing on the preliminary objections and possible merits, reparations and costs, as soon as possible.

13. To inform the representatives, the State, and the Inter-American Commission that they have until April 28, 2012, to present their final written arguments and final written observations, respectively, with regard to the preliminary objections and possible merits, reparations and costs in this case. This time limit is non-extendible and independent of reception of the copy of the recording of the public hearing.

14. To order, in accordance with Article 4 of the Court's Rules for the Operation of the Victims' Legal Assistance Fund, that the Secretariat of the Court open a file of expenses, where each expense incurred in relation to the Victims' Legal Assistance Fund will be documented.

15. To require the Secretariat of the Inter-American Court to notify this Order to the representatives of the presumed victims, the Argentine Republic, and the Inter-American Commission on Human Rights.

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri

Secretary