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REPORT No. 236/19
CASE 13.002

REPORT ON THE MERITS

CRISTINA BRITEZ ARCE AND FAMILY
ARGENTINA

Approved by the Commission in El Salvador, San Salvador, on December 6, 2019

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Argentina. December 6, 2019.

I. INTRODUCTION

1. On April 20, 2001, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Ezequiel Martín and Vanina Verónica Avaro (hereinafter “the petitioners”) alleging international responsibility of Argentina (hereinafter “the Argentine state,” “the state,” or “Argentina”) to the detriment of their mother, Cristina Britez Arce, for the alleged irregularities in legal proceedings in the domestic court system as a result of her death.

2. The Commission approved admissibility report No. 46/15 of July 28, 2015.¹ On October 1, 2015, the Commission forwarded said report to the parties and indicated its availability to reach a friendly settlement, although the conditions to initiate said proceedings never materialized. The parties were given the statutory time-limits to submit additional observations on the merits. All information received was duly forwarded to the respective parties.

II. ALLEGATIONS OF THE PARTIES

A. Petitioners

3. The petitioners allege that, on June 1, 1992, medical malpractice by the medical staff of the Ramón Sardá Mother’s and Children’s Public Hospital (Hospital Público Materno Infantil “Ramón Sardá,” hereinafter referred to as “Hospital Público Sardá”) of the city of Buenos Aires had led to the death of Cristina Britez Arce, who was pregnant at the time. Ms. Britez Arce appeared at the hospital where they informed her that the fetus had died, and she died shortly after labor was induced so she could deliver the stillborn child. They contend that both deaths took place as a result of preeclampsia-eclampsia that had not been duly diagnosed. As a result of these incidents, a series of criminal proceedings were conducted, in which access to an independent and impartial court was not provided, nor a duly substantiated ruling issued. Likewise, they stated that Cristina Britez’s death took a toll, both physically and emotionally, on her two teenage children.

4. They indicate that a criminal complaint was filed against the medical staff who took care of Ms. Britez Arce at the hospital and that, as part of the proceedings, forensic expertise was requested, which was provided by the experts Poggi and Casavilla and included in the case file a year later. They allege that the expertise was false, and therefore it was ruled null and void by the judge hearing the case, who filed a report *ex officio* on the falsification of a public document.

5. Subsequently, a new expert report was ordered, which was submitted one day before the statute of limitations for the criminal proceeding came into force. This report confirmed that Ms. Britez Arce was a high-risk patient and that she had been poorly taken care of. On the basis of this new expertise, the prosecutor decided to charge the medical staff for manslaughter. They allege as well that, while the investigation was being conducted, the medical record was altered.

6. They indicate that, in December 1998, the prosecutor dealing with the case requested sentences of 3 years prison and 9 years disqualification from practicing medicine for the medical staff charged; nevertheless, in July 2003, the judgment acquitted them. They report that said ruling was upheld in the court of second instance and that the extraordinary federal appeal was ruled inadmissible because it was filed outside the statutory time-limits, which occurred as a result of a “ploy” used by the court’s staff when receiving the appeal, which prevented them from having access to appeal on time. They explain that, although it was filed at 9:29, the staff marked the time of receipt at 9:32 by hand, instead of using the official date stamp.

7. As for the case of the falsification of a public instrument which was filed at the same time, they allege that the stage of pre-trial investigation extended for more than four years, during which the judge hearing the case

¹ IACHR. Report No. 46/15. Petition 315-01. Admissibility. Cristina Britez Arce. Argentina. July 28, 2015. The Commission ruled that the petition was admissible with respect to Articles 4, 8, and 25 of the American Convention in connection with Article 1 of the same instrument.

acquitted the experts being charged five times and, each time, the Fourth Chamber of the Court of Appeals overturned the decision to acquit. After the fourth acquittal was overturned, the judge hearing the case decided to request an forensic expert report from the plenary of the Medical Examiners Corps of the Supreme Court of Justice of the Nation (*Cuerpo Médico Forense de la Corte Suprema de Justicia de la Nación*, hereinafter referred to as the “Medical Examiners Corps”) which had ruled that the expertise provided in the trial of the physicians of the Hospital Público Sardá had been correct, dismissing the possibility that there had been any medical malpractice committed. They point out that, although the expertise had been declared null and void “because of the corrupt practices” of its members, there were court proceedings and rulings that took that evidence—as well as other evidence that had been challenged—as a precedent, which would tend to establish the use of illegally obtained evidence.

8. They add that, in November 1997, the judge ordered another expert report, this time entrusted to the Catholic University of the Province of Córdoba. That expert report showed that Ms. Britez Arce died of preeclampsia-eclampsia pathology, which had not been duly diagnosed; that no treatment had been prescribed; that minimum monitoring recommendations had not been made; that she had not been correctly assessed during prenatal checkups; and that she had not been given the right medicines. Nevertheless, that expert report was used as the grounds for acquitting the experts. They indicate that recusal of the judge hearing the case was requested for “unwarranted delays,” for the “judge’s interest in the trial,” and for “prejudgment.” They note that said recusal was turned down.

9. The petitioners indicate that, in April 1998, the former spouse of Ms. Cristina Britez Arce filed a complaint against the 31 members of the Medical Examiners Corps for making false statements. In April 1999, the judge hearing the case decided to acquit the 31 physicians charged in the case. They allege that, in the appeal to this ruling, 26 essential pieces of evidence were not taken into consideration and that they were denied a duly reasoned judgment. They report that a cassation appeal was filed against this ruling and, subsequently, an appeal was filed complaining that the cassation had been denied, as well as an extraordinary federal appeal, all of them dismissed on the basis of the argument that the proceeding was confined to assessing the evidence. The petitioners assert that they were unable to have access to a comprehensive review of the judgment as stipulated by Article 8.2(h) of the Convention.

10. They allege that the impunity that the 31 members of the Medical Examiners Corps secured directly impacted the rest of the cases because the physicians accused of malpractice were acquitted and charges were dropped, as well as the experts who conducted the first expert examination.

11. They indicate that, in 1994, they filed civil proceedings for damages and it was only 18 years later that they obtained a final judgment. They state that, also in this proceeding, irregularities appeared, such as the fact that one of the physicians appointed to conduct the expertise, Dr. Barrón, although he was sworn in as an independent expert, was brought into the case on purpose because he had been an expert on the same elements of the expertise (the causes of the death of Cristina Britez and her unborn child) in March 2002 in a report produced by the Medical School of the University of Buenos Aires in the case lodged against the experts Casavilla and Poggi. They indicate that the judgment from the court of first instance was based on the expertise of that expert, who had already given his opinion on this issue. They add that, in the court of second instance, Dr. Barrón’s expertise was dispensed with, but no other expertise was taken into consideration to uphold the dismissal of the complaint.

B. State

12. The state alleges that the IACHR is being used as a “fourth instance” to review the assessments of fact and law made by domestic judges and courts.

13. The state alleges that, in the framework of the case for manslaughter, the alleged criminal responsibility of the medical staff who attended Ms. Cristina Britez Arce was investigated, and they were acquitted of wrongdoing and charges were dropped in July 2003. That judgment was appealed by the prosecutor dealing with the case and upheld in the court of second instance; likewise, the extraordinary federal appeal that was filed was dismissed by the Court of Appeals because it was out of time.

14. Furthermore, the state indicates that, in the case filed ex officio for falsification of a public instrument, the court hearing the case investigated the alleged criminal responsibility of the two experts and convened a plenary session of the Medical Examiners Corps, which issued its ruling on May 21, 1997. According to the state, this plenary “was declared null and void” by the Fourth Chamber of the Criminal Court, because of which another expertise was ordered, which was conducted in the Catholic University of the Province of Córdoba. The state contends that the court acquitted both forensic experts, a ruling that was upheld by the National Criminal and Correctional Appeals Court on October 21, 2002.

15. Furthermore, the state points out that, on the basis of the complaint filed by the father of the petitioners, the alleged responsibility of the 31 physicians of the Medical Examiners Corps was investigated, because it was deemed that they falsified their plenary expertise. The state explains that, on April 12, 1999, the court ruled to acquit the 31 physicians accused, a decision that was appealed by the complainant and upheld by the Chamber of Appeals on August 6, 1999. Against said decision, a cassation appeal was filed, which was turned down on October 20, 1999. When the complaint appeal was filed for denial of cassation, the National Criminal Cassation Court ruled to dismiss it on March 30, 2000. Against this decision, the complainant filed an extraordinary federal appeal, which was declared inadmissible.

16. The state alleges that the proceedings filed against the accused medical staff followed due process of law in conformity with the standards required by international human rights law and the American Convention. In that respect, it asserts that there are no elements in the case files that would make it possible to substantiate the failure to ensure the independence and impartiality of the judges or courts who acquitted the accused physicians. It states that the petitioners, as complainants, never recused the judges hearing the case and always benefited from the possibility of submitting all claims they deemed relevant and filed all the procedural remedies established under domestic law.

17. The state points out that the series of expert reports, which the petitioners alleged had been falsified for the purpose of covering up for the medical staff, have been declared null and void under domestic law. The last one of them—conducted by the plenary of the Medical Examiners Corps—was disqualified by the Criminal Court and afterwards a new expertise was ordered, regarding which there seem to be no challenges from the complainants, at least in the briefs of the proceedings. It adds that the mere fact that the medical staff that has been the target of the complaint by the petitioners have not been convicted for the crimes they are charged with, does not tend to establish that judicial guarantees have been violated.

18. The state indicates that the petitioners confine themselves to pointing out that the judgments issued by the various courts were mistaken in their reasoning and that they did not take into account basic facts and evidence to demonstrate the criminal responsibility of the accused. They confine themselves to challenging the assessments of the facts and evidence produced in the cases.

19. As for the alleged violation of the right to life, the state indicates that the facts have not been corroborated in the domestic judicial system, nor have the petitioners provided evidence that would make it possible to demonstrate that Ms. Britez’s death occurred as a result of the alleged malpractice of the medical team of the Hospital Público Sardá. Likewise, it asserts that whether or not malpractice had occurred cannot be determined by the Commission, not only because it lacks the elements needed to establish this but also because, in addition, that determination exceeds its jurisdiction, which pertains to local justice and that the latter has already made its judgment, dismissing that possibility.

20. The state indicates that the petitioners have not been able to conclusively prove that the alleged violations took place. It states that the only supporting evidence of the petitioners is the expert report drafted by the physicians of the Catholic University of Córdoba which was dismissed in domestic courts. Regarding this expertise, the state points out that it was dismissed in both the criminal case and the civil suit because it was deemed that the conclusions reached by the physicians had been viewed as tainted by partiality not only for having exceeded the limits when describing the conducts and personally disqualifying the other professionals

involved in the case, but also for “having based much of their reasoning on unproven data or allegations made only by the plaintiffs in the petition.”

21. The state points out that the following should have been taken into account: a) Ms. Britez Arce started her checkups at the Sardá Mother’s Hospital on March 10, 1992, when she was already 29 weeks pregnant; b) she was examined many times at the checkups without showing any abnormalities; c) the alleged irregularities of medical record No. 309.420 were not substantiated in the domestic court, where it was deemed that they were due to sloppiness and did not reflect the intent to alter a document; d) the family’s decision to not allow an autopsy to be carried out immediately after the death of Ms. Britez Arce made it difficult to determine with certainty the cause of her death.

22. It reiterates that there is no element appearing in the case files that would make it possible to claim that there was a lack of independence and impartiality regarding the judges or courts that acquitted the physicians charged for the death of Cristina Britez or for those charged with falsifying the expertise. It indicates that the petitioners confine themselves to challenging the assessments of the facts and evidence, without being able to prove any violation of due process of law.

III. FACTUAL DETERMINATIONS

A. The death of Cristina Britez Arce

23. Cristina Britez Arce, 38 years old, mother of Ezequiel Martin Avaro and Vanina Verónica Avaro, at that time 15 and 12 years old respectively, and nine months pregnant at that time,² appeared at the Hospital Público Sardá on June 1, 1992, at around nine o’clock, claiming she had lower back pain, fever, and sparse loss of fluid from the genitals.³ She was administered an ultrasound scan, which indicated that the fetus was dead, as a result of which she was admitted to the hospital for inducing labor for delivery of the dead fetus.⁴ According to the death certificate, Cristina Britez Arce died that day from “a non-traumatic cardiopulmonary arrest.”⁵

B. Domestic proceedings

1. Case No. 2391 entitled Britez Arce Cristina s/manslaughter – Correctional Court No. 8, Secretariat 636

24. On June 15, 1992, Mr. Miguel Ángel Avaro, father of Ezequiel Martin Avaro and Vanina Verónica Avaro, filed a criminal complaint for the death of Cristina Britez Arce, requesting an autopsy of both her and the fetus.⁷ The complaint requested the suspension of the autopsy because “it had been ordered that experts of the party participate in it proposed by those who are not party to the case.”⁸ The autopsy was conducted on July 25, 1992.⁹

25. As part of the case, on June 24, 1993, the forensic experts Carlos Fernando Leoncio Poggi and Florencio Casavilla submitted an expert report that was later declared null and void. On October 4, 1993, the correctional judge filed a complaint ex officio against them for falsification of a public instrument. This complaint gave rise to the case filed under docket No. 21.375/96, which shall be described in detail below.

² According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

³ Appeal court judgment in case 27.985, referring to the medical record. Annex to the initial petition.

⁴ Appeal court judgment in case 27.985, referring to the medical record. Annex to the initial petition.

⁵ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

⁶ Being considered by Judge Angela Mónica Braidot and Secretary Sanzone.

⁷ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

⁸ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

⁹ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

26. The Medical School of the National University of Buenos Aires was requested to provide their expertise; however, the Medical School reported that it could not grant the request.¹⁰ The Medical Examiners Corps was then requested to designate other forensic physicians specializing in gynecology and obstetrics.¹¹ On April 25, 1995, the physicians Schiavo, Papagni, Wikinski, Arlía, and Castex of the Medical Examiners Corps drafted an expert report.¹² The Commission has not received a copy of said report.

27. The petitioners state that Judge Ángela Mónica Braidito questioned one of them, who “with great difficulty” said that the patient was indeed at high risk.¹³ In their expert report, they indicated that the blood pressure readings appearing in the medical record showed abnormalities and pointed to a minimum gestational syndrome that is equivalent to mild preeclampsia and indicated the advisability of admitting the patient to the hospital.¹⁴

28. On December 16, 1998, National Investigating Criminal Prosecutor No. 14 formally charged Dr. Patricia Carmen Anido and Dr. Eduardo Mario Negri, professionals of the Hospital Público Sardá, with manslaughter and requested a suspended sentence of three years prison and nine years of special disqualification from practicing medicine. In his accusation he referred to the “intentionally eclectic and contradictory nature of the many medical reports.”¹⁵ He claimed the following grounds for his accusation:

[...] many procedural actions rendered null and void, an abundance of taking of evidence with findings and even criminal cases being processed based on them, leading to “investigations of the investigation,” which, to date, are in the process of being explained.

All of this has entailed making a huge effort above and beyond what is normal for the gathering of elements for the purpose of securing sufficient evidentiary weight in order to move forward with them.

[...] because of an excessively voluminous case, which has conspired against procedural time-limits governing the case and even dooming it to the shroud of statutory limits in the case regarding certain persons charged.

[...] I must also highlight the statements of the witnesses HORACIO ANTONIO SCHIAVO at pages 450/1 and HECTOR NICOLAS PAPAGNI at page 452, where they pointed out coincidentally that, for the visits made by the woman on April 6 and May 5, the attending physicians should have taken other precautions with the patient, because for the first checkup she should have been admitted to the hospital and for the second they should have ordered more thorough tests.

[...] Likewise, the responses from the National Academy of Medicine are of interest in the matter [...] From said report the accepted classification of high blood pressure during the pregnancy can be concluded [...] pointing out that, according to the Secretariat for Public Health of the Nation, as the first pathological reading, that of 140/90 mm HG in women with normal blood pressure when not pregnant. They point out as well the various degrees of gravity of the clinical pictures and the need for outpatient monitoring or admittance to the hospital in line with the patient’s gravity, stressing that high blood pressure during pregnancy jeopardizes both the mother’s health and that of the fetus [...] Basically, in order to establish the diagnosis and causes of death of BRITTEZ ARCE and her unborn child, the expertise conducted by the School of Medicine of the Catholic University of Córdoba appearing at pages 1262/1289 must be taken into account, as it indicates, in its relevant part, that the cause of death was preeclampsia, which was neither diagnosed nor treated. It also points out that, by the second checkup, her medical showed that suffered from hypertensive disorder while pregnant, as well as prior high blood pressure in her previous pregnancy, as indicated by the cardiologist, constituting enough elements to qualify this patient as suffering from preeclampsia.

[...] In the interpretation of this study, the baseline of the heart rate, the type of variability and the drops in heart rate of the fetus have been omitted [...] they did not examine the amniotic fluid nor did they examine her genitals to check her cervix and on that basis determine the feasibility of admitting the patient to the hospital.

[...] It must be pointed that hyperglycemia may have come from the stress sustained by the patient when being notified that her child was dead [...] They also underscore that she was subject to major stress (news of the death

¹⁰ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition

¹¹ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition

¹² According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition

¹³ Initial petition.

¹⁴ According to what is indicated in the complaint of the extraordinary legal remedy of December 23, 2003. Annex to the brief of March 30, 2009 from the petitioners.

¹⁵ Indictment of December 16, 1998. Annex to the initial petition.

of her child). Why did they not wait for the result before subjecting her to another source of stress, that is, labor or childbirth? Conclusion: according to the facts recorded in the Medical Record, the patient suffered from eclampsia, and her acidosis and brain hemorrhage caused her death as a result of an irreversible cardiopulmonary arrest.”

The conclusions of the forensic expertise ordered in the papers signed by the Official Medical Examiners DR. HÉCTOR PAPAGNI AND DR. HORACIO SCHIAVO, along with childbirth specialists DR. ANA MARIA BORELLI AND DR. ALBERTO BRAILOVSKY, who submitted dissenting opinions separately, were added to pages 1164/1187.

In response to the question asked by this Prosecution, they pointed out that hypertension is the first cause of maternal death in the world, even when it is treated [...]. On the basis of those observations they ratify what was indicated by them previously in the section on the advisability of admitting the patient because of her weight gain, blood pressure of Mx. 130 Mn. 90, 38 years of age, preeclampsia indicated in a previous pregnancy, which makes her pregnancy a high-risk one and which constitute the first signs forecasting the storm, and even if she was hospitalized its evolution could not have been ruled out [...].¹⁶

29. On July 18, 2003, a judgment of acquittal was given to the accused medical staff Negri and Anido, because it was disputed whether or not the deceased had had a high-risk pregnancy “and because the causes of death of the fetus and its mother were unknown, what the Medical Examiners Corps had ruled in the last of the technical examinations added to the case had to be taken into account.”¹⁷ According to the judge of the court of first instance, the three key elements of negligence did not appear in the case: 1) objective foreseeability of the outcome; 2) breach of duty or carelessness which would nullify the value of the action; and 3) the objectively imputable outcome that would nullify the value of the action.¹⁸ This judgment was appealed by the prosecutor and upheld by the Criminal and Correctional Appeals Court, indicating that “the hypotheses handled in the complaint are probable, but they have not been proven, and the delay in conducting the autopsy does not make it possible to reach definitive conclusions on the cause of death, and therefore it is not possible to determine, with absolute certainty, the reasons for the death, and it is not admissible to attribute responsibility to the accused physicians.”¹⁹ In the extraordinary federal appeal, it was stated that the judge of the court of first instance did not take into account the arguments of the complaint regarding the nullification proposed by the introduction of a record from a medical office illegitimately obtained, thus producing “the theory of the fruit of the poisonous tree.” Likewise, it stated that the “essential and decisive” evidence presented by the complaint were not considered in the judgment of the court of first instance nor in the court of second instance.²⁰ According to what was indicated by both parties, the appeal was declared inadmissible by the Court of Appeals because it was submitted past the time-limits.

2. Case No. 21.375/96 entitled CASAVILLA, Florencio and others s/falsification of a public document, National Criminal Investigation Court No. 3, Secretariat 110²¹

30. As referred to previously, the case had its origins in the complaint filed ex officio by the correctional judge for the alleged criminal responsibility of Dr. Florencio Casavilla and Dr. Carlos Fernando Leoncio Poggi for falsification of the expertise given in case No. 2.391. The perpetration of the crimes of false expertise, falsification of a public instrument, and cover-up was reported.²² Afterwards the complaint was extended to include falsification of medical record No. 309420.²³ The complaint also requested an administrative inquiry of the physicians Casavilla and Poggi.²⁴

¹⁶ Indictment of December 16, 1998. Annex to the initial petition.

¹⁷ According to what is indicated in the complaint of the extraordinary legal remedy of December 23, 2003. Annex to the brief of March 30, 2009 from the petitioners.

¹⁸ According to what is indicated in the complaint of the extraordinary legal remedy of December 23, 2003. Annex to the brief of March 30, 2009 from the petitioners.

¹⁹ According to what is indicated in the complaint of the extraordinary legal remedy of December 23, 2003. Annex to the brief of March 30, 2009 from the petitioners.

²⁰ Extraordinary legal remedy of December 23, 2003. Annex to the brief of March 30, 2009 from the petitioners.

²¹ Being considered by Judge Guillermo Carvajal. Presentation of June 2, 1998 to Dr. Granillo Ocampo, Minister of Justice of the Nation. Annex to the initial petition.

²² According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

²³ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

²⁴ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition

31. Expertise was requested through the good offices of the Director of the National Academy of Medicine, with expertise items.²⁵ The report was submitted on July 11, 1996.²⁶ It was reported that it could not rule on items 4 and 6 because they refer to a specific case not linked to generic problems and where specific situations are at stake.²⁷

32. The physicians were acquitted and both the Public Ministry of the Nation and the complainant filed an appeal. The order of acquittal was overturned and the plenary Medical Examiners Corps was ordered to refrain from ruling on the physicians Casavilla, Poggi, Schiavo, and Papagni for a nonrenewable period of 20 days.²⁸

33. This gave rise to a plenary of the Medical Examiners Corps of the Nation, which was issued on May 21, 1997. According to what was reported by both parties, said plenary was ruled null and void by the Fourth Chamber of the Criminal Court on September 23, 1997, and another expertise was ordered, which was conducted at the Catholic University of Córdoba.²⁹

34. On March 13, 1998, at the request of National Investigating Judge No. 3, medical experts of the Catholic University of Córdoba conducted an “official medical expert report for cross-checking” that of the physicians Poggi and Casavilla. The report was submitted to the judge, by means of a note on the 25th of that month by the Dean of the University, Esteban Trakal. Among the observations of the expert report, the following are noteworthy:

The cause of death is preeclampsia which was neither diagnosed nor treated. In the second checkup the medical record showed that she had a hypertensive disorder in the pregnancy which with [...] there are enough elements to characterize this patient as having preeclampsia [...] More exhaustive monitoring of the mother was also missing during the checkup, such as measuring blood pressure, and since it was already the eighth fetal checkup for this patient, they did not examine her amniotic fluid nor did they carry out any genital examination to confirm the condition of the cervix and thus determine the feasibility of admitting the patient to the hospital (page 688). Examination of the amniotic fluid can be carried out using an invasive method, called amniocentesis, or non-invasive, which is called amnioscopy. [...] These techniques are simple and they were not administered. [...] the stillborn child that was received during delivery was not described.

How is it possible that there is no report that the histopathological examination of the placenta was not requested since it was available (manual extraction) (page 692), when this is done it provides a sound criterion for examination, at least to find out whether or not it is complete. “The placenta is the written page of the pregnancy.”³⁰

[...] Conclusion: according to the facts recorded in the medical record, the patient suffered from eclampsia, acidosis, and her brain hemorrhage led to her death from an irreversible cardiopulmonary arrest (folio 693)

[...] it was a high-risk pregnancy and the necessary precautions were not taken.

[...] The physicians Poggi and Casavilla did not correctly interpret the facts indicated in the medical record.

[...] We believe that the most important risk factor for Ms. Britez Arce and her fetus was the deplorable quality of the care that she was given [...].³¹

35. According to the expert report of the Catholic University of Córdoba, the medical record showed various omissions.³² The medical record also had another number, an altered number, in addition to which its pages

²⁵ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition

²⁶ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition

²⁷ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition

²⁸ According to what is indicated in the expert report of May 7, 1997, signed by the physicians Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. Annex to the initial petition.

²⁹ Briefs of July 19, 2005 and September 27, 2018 from the state.

³⁰ Expertise provided by the University of Córdoba on March 13, 1998. Annex to the initial petition. The expertise is provided as part of case 21.735 and annex 2.391.

³¹ Expertise provided by the University of Córdoba on March 13, 1998. Annex to the initial petition. The expertise is provided as part of case 21.735 and annex 2.391.

³² Expertise provided by the University of Córdoba on March 13, 1998. Annex to the initial petition. The expertise is provided as part of case 21.735 and annex 2.391.

were not all numbered, and various pages provide an incomplete name. This expertise, in addition to highlighting the flaws in the medical record and the care provided to both the fetus and the mother during the pregnancy, as well as negligence in the care provided on June 1, 1992, indicates that the experts Poggi and Casavilla did not correctly interpret the information that was given to them for preparing the expert report and states that “the conclusions reached by the physicians Poggi and Casavilla are unsubstantiated,” and points out that most of the facts appearing in the medical record were interpreted erroneously, and in conclusion they have strayed from what actually happened.³³

36. On April 30, 1998, the complaint submitted a request for recusal of the investigating judge Guillermo Carvajal because of the following: i) the judge’s stake in the proceedings, with a bias favoring the defendants; and ii) prejudgment, for his way of assessing the case ahead of the hearings. The complaint noted that, although the inquiry must last only four months, according to Article 507 of the CPP, this case lasted almost five years. It added that although there was “conclusive evidence to indict the defendants Poggi and Casavilla,” they were acquitted on five occasions, with all of the acquittals overturned by the Fourth Chamber of the Criminal Court. It indicated he “ordered” an expertise from the Federation of Associations of Gynecology and Obstetrics (*Federación de Asociaciones de Ginecología y Obstetricia—FASGO*) “for the sole purpose of obtaining an expertise as a measure to compensate for that of Córdoba,” aimed at ensuring delays to bring into force the statute of limitations. It also stated that he did not respond to the request of the Prosecutor of the Court of First Instance Dr. Crous; to that of the court of second instance Dr. Sáenz; or to that of the same Fourth Chamber for the defendants to be investigated again.³⁴

37. On June 18, 1998, the recusal was ruled inadmissible but Judge Guillermo Carvajal was given the recommendation “to carry out the proceedings with greater speed because, as indicated by the complainant, we would be coming close to barring the case because of the statute of limitations.”³⁵

38. On October 21, 2002, the Court of Appeals upheld the ruling of the court of first instance which had acquitted the physicians Casavilla and Poggi.³⁶ This was done taking into account the responses of the last expert report in the case, conducted by the Academic Unit of Obstetrics of the Hospital de Clínicas, belonging to the Medical School of the University of Buenos Aires, in which it was said, among other things, that Cristina Britez Arce was not a high-risk patient and had a normal pregnancy and that the care given to her was adequate.³⁷

3. Case 27.985/98, entitled MEDICAL EXAMINERS CORPS s/false witness statement, National Criminal Investigation Court No. 4, Secretariat 113³⁸

39. On April 1, 1998, Mr. Miguel Ángel Avaro, father of Ezequiel Martín Avaro and Vanina Verónica Avaro, filed a criminal complaint against the 31 physicians who conducted the plenary expert report in case 21.375/96 of May 21, 1997, because he deemed that the expert report was false and concealed the causes of death of Cristina Britez Arce.³⁹ In said complaint, Mr. Avaro indicated that the plenary expert report was declared null and void by the Fourth Chamber of the Court “because it was suspicious.”⁴⁰

40. The daily newspaper *La Nación*, in a 1998 article, contended that, in an interview with Dr. Julio Ravioli, the latter had revealed that, in the plenary ordered by Judge Carvajal a report had been circulated with questions that had been previously answered so that the forensic experts would only have to sign the report.⁴¹ Physicians from the Medical Examiners Corps filed a complaint against the newspaper *La Nación* for damages caused by

³³ Expertise provided by the University of Córdoba. Annex to the initial petition.

³⁴ Presentation of June 2, 1998 to Dr. Granillo Ocampo, Minister of Justice of the Nation. Annex to the initial petition. Likewise, recusal appeal on May 5, 1998. Annex to the brief of March 30, 2009 from the petitioners.

³⁵ Ruling on the recusal appeal of June 18, 1998. Annex to the brief of March 30, 2009 from the petitioners.

³⁶ Ruling on the appeal. Annex to the briefs of April 4, 2003 from the petitioners. See also statements of the state’s briefs of July 19, 2005 and September 27, 2018.

³⁷ Ruling on the appeal. Annex to the briefs of April 4, 2003 from the petitioners.

³⁸ Being heard by the investigating judge Mariano Osvaldo Berges.

³⁹ Complaint filed by Mr. Miguel Ángel Avaro with the Investigating Court. Annex to the brief of September 4, 2003 from the petitioners.

⁴⁰ Complaint filed by Mr. Miguel Ángel Avaro with the Investigating Court. Annex to the brief of September 4, 2003 from the petitioners.

⁴¹ News story from *La Nación*. Annex to the initial petition.

various press reports that “questioned their professional practice [...] especially in connection with the two criminal cases associated with the death of Ms. Cristina Britez Arce and her unborn child in the Mother’s Hospital of Sardá [...]. In the ruling of the appeal inferred by *La Nación*, the Supreme Court of Justice of the Nation ruled that “the ruling under appeal holding the above-mentioned newspaper liable constitutes an undue restriction on the freedom of expression, and therefore it must be overturned.”⁴²

41. On September 7, 1998, Dr. Julio Alberto Ravioli submitted a witness statement. In that statement, it indicated, among other matters, that “a report signed by more or less 21 forensic physicians reaches the office and that it was that questionnaire with the responses. It came to the office of forensic physicians, because there were five of them who had not yet signed it. This was our first contact with this case.” He also indicated that “in this report the questions were answered and nothing else, without any observations, although every medical examiner’s report generally has a chapter called forensic observations.”⁴³ He pointed out that they requested the case file and that they could not rule on obstetric matters. When they were informed that they could not recuse themselves, they decided to draft a separate report. He indicated that, for conducting the plenary, there was no meeting of the medical examiners nor was there any discussion. He added that there was a third report, signed separately by four general practitioners: Pérez de Pliego, Rodríguez Girault, Aldo Ludueña, and Jarazo Veira. The complaint stated that the Dean himself of the Medical Examiners Corps admitted to having requested three physicians to draft the responses to be circulated to all the medical examiners for them to sign the pre-established ruling.⁴⁴ Prosecutor No. 6, Areu Franco, requested the issuance of an order to start an investigation because, although there were 87 physicians in the Medical Examiners Corps, only 40 physicians in the plenary signed it in three different reports.⁴⁵

42. On April 12, 1999, the judge of the case ruled to acquit the physicians who were accused.⁴⁶ On April 16, 1999, the complaint filed an appeal and requested nullification, for lack of a sufficient statement of reasons, against acquittal of the 31 physicians. In its brief, it stated that the ruling did not take into consideration many of the evidentiary elements that were submitted by the complaint and which were of the utmost importance.⁴⁷

43. On August 6, 1999, a ruling was issued indicating that “the ruling of the investigating judge is substantiated, so that the dispute about its content cannot lead to the sanction that is requested.”⁴⁸ As for the merits, the court reviewed the expert reports prepared for both case 2.391 and case 21.375. The ruling points out that it must be “stressed that this is a third proceeding in which the cause of death of Cristina Britez de Arce (sic) is not investigated, rather they debate whether or not there was a crime perpetrated by the physicians who conducted the expertise, requested by the judge hearing the case, in connection with another expertise carried out by Dr. Casavilla and Dr. Poggi.”⁴⁹ It also indicates that the three judgments made by the medical examiners “differ in their technical observations, but that, in terms of substance, their conclusions are identical”; that is how said rulings were transcribed. There is also a reference to the expertise of the Catholic University of Córdoba, and it was concluded that “the falsification consists of saying something contrary to the specific knowledge of the person making the statement. [...] Thus, a mere discrepancy with other experts over the conclusions that were reached does not establish the offense that is now being charged. Not even an error or ignorance can charge a person with this offense. [...] Therefore, it is not the duty of the judge, as the parties claim, to act as a third-party expert, but rather to examine whether or not the expertise, in the concrete case, is in line with the facts that have been investigated and are at least accurate. [...] The other accusation made by the complaint, which does not appear in the prosecution’s indictment, is the concealment of alleged falsehoods in the medical record. Now, regarding this item, so that this accusation can be leveled at the medical examiners, it must have been proven that indeed it was falsified substantially and that this was not voluntarily reported to the judge by the official experts [...]. It is impossible to accuse the medical examiners of having covered up a falsehood which, to date, has not been proven [...]. Furthermore, and as the investigating judge did indeed

⁴² Ruling on the appeal, June 24, 2008. Annex to the brief of March 30, 2009 from the petitioners.

⁴³ Witness statement by Dr. Julio A. Ravioli. Annex to the initial petition.

⁴⁴ Complaint appeal filed by the complainants on November 2, 1999. Annex to the initial petition.

⁴⁵ Presentation of June 2, 1998 to Dr. Granillo Ocampo, Minister of Justice of the Nation. Annex to the initial petition.

⁴⁶ State’s briefs of July 19, 2005 and September 27, 2018.

⁴⁷ Appeal filed on April 16, 1999. Annex to the initial petition.

⁴⁸ It is entitled as 11.267 – Medical Examiners Corps. Appeal court judgment of August 6, 1999. Annex to the initial petition.

⁴⁹ Appeal court judgment of August 6, 1999. Annex to the initial petition.

highlight, the alleged falsehoods and omissions were only uncovered later, after the physicians had worked on the materials sent to them by the court. Under these conditions, there is no other alternative but to uphold the acquittal that is under appeal.”⁵⁰

44. The complainant filed a cassation appeal, which was dismissed on October 20, 1999 by the National Criminal Cassation Court, because it believed that the appeal “will not succeed, because in addition to not providing the reason for the nullification for lack of grounds indicated by the complainants to proceed to opening an extraordinary instance, in the understanding that the procedure being challenged provides sufficient reasons and adequate grounds to the decision that was adopted there. As a result, it must be pointed out that, because there are no grounds for assuming that the above-mentioned judgment was arbitrary, the cassation appeal is hereby ruled inadmissible.”⁵¹

45. On November 2, 1999, the complainant filed an appeal regarding the denied cassation with the National Criminal Cassation Court, stating that “the institutional gravity highlighted by this case is such that the First Chamber of the Court cannot argue that the cassation is denied on the basis of one blanket argument that there is no nullification for lack of grounds, that the ruling provides sufficient reasons, or that a cassation does not pertain because the assumption of arbitrariness is not proven. NOTHING ELSE. It considers that this complaint has thus been deprived of the constitutional right to a substantiated judgment.”⁵² The appeal was dismissed on March 30, 2000 for the following reasons:

First of all, it is relevant here to point out that, as indicated by the Court a quo, in the resolution that upholds the acquittal of the defendants, in these proceedings “the cause of death of Cristina Britez Arce is not investigated, but rather whether or not there was an offense perpetrated by the physicians who conducted the expertise at the request of the judge hearing case, with respect to the other expertise by Dr. Casavilla and Dr. Poggi [...]. This accusation comes from the expertise provided by Dr. Cacciavillani and Dr. Llabot “physicians from Córdoba belonging to the Catholic University of Córdoba, proposed by the complaint to perform the role of official experts and main evidence...” in these proceedings, which basically affirm the existence of a pathology—eclampsia or preeclampsia—in the patient who “was neither treated nor diagnosed by the physicians of Sardá.”

[...] It must be pointed out here that the respondent has nothing to say about the reasoning set forth—as the basis for its grievances is the absence of motivation for the judgment of alleged violations of the principle of sufficient grounds, the rules of logic, psychology, and common experience and for lack of conclusive proof and its alteration—, because of which, in that regard, its submittal fails to provide autonomous substantiation because it does not refute the arguments on the basis of which the Court upholds the acquittal ruled by the Investigating Judge.

Although this omission of the cassation appeal would be enough to rule its inadmissibility, further still it must be stated here that, despite the sharp discrepancies between the expert reports prepared by the experts designated by the National University of Córdoba and by the members of the Medical Examiners Corps, the questions brought to this court deal with situations referring to reviews of matters of fact and evidence that do not pertain to the present appeal that was filed, which did not highlight any flaws in the judgments made by the Court a quo that would make it possible to qualify its judgment as arbitrary or groundless.

[...] Finally, it is necessary to point out, regarding the alleged irregularities in the medical record, that the decision of this court is made strictly in the context of the appeal of the complaint [...] it cannot involve itself in reviewing situations that are being examined in a different case [...].”⁵³

46. Against said ruling, on May 8, 2000, the complaint filed an extraordinary federal appeal in which it also requested recusal “against the members of the Supreme Court of Justice of the Nation [...] for the purpose of establishing a high court with members who do not have any authority over the MEDICAL EXAMINERS CORPS.”⁵⁴ Said appeal was ruled inadmissible by the National Criminal Cassation Court on October 17, 2000, because it deemed that it was challenging assessment of evidence and because it did not provide any grounds for the arbitrariness.⁵⁵

⁵⁰ Appeal court judgment of August 6, 1999. Annex to the initial petition.

⁵¹ Cassation judgment of October 20, 1999. Annex to the initial petition.

⁵² Complaint appeal filed by the complainants on November 2, 1999. Annex to the initial petition.

⁵³ Ruling on the complaint appeal, March 30, 2000. Annex to the initial petition.

⁵⁴ Extraordinary federal appeal of May 8, 2000. Annex to the initial petition.

⁵⁵ Brief of July 19, 2005 from the state.

4. Civil suit for damages. Case file 42.229/94 entitled “Avaro Miguel Ángel v. Fernández, Silvia and others for damages”

47. The lawsuit was filed by Mr. Miguel Ángel Avaro on May 31, 1994 against the physicians responsible for providing medical care to Ms. Cristina Britez Arce, against the Hospital Materno Infantil Ramón Sardá, and against the government of the City of Buenos Aires, for negligence, incompetence, and carelessness.⁵⁶

48. On July 24, 2000, the physician Eduardo Roberto Barrón submitted an official expert report as ordered by the civil judge in charge of Court No. 101, Alejandro C. Verdaguer, answering ten questions about the care provided to Ms. Britez during her pregnancy, as well as on June 1, 1992. He indicated that “38 years of age and a background of high blood pressure HBP prior to pregnancy are high-risk factors for hypertension. In other words, the pregnancy of Ms. Britez Arce can be deemed to be at high risk of developing hypertension during the pregnancy. [...] According to the antecedents, Ms. Britez Arce had high blood pressure prior to the pregnancy. She did not have high blood pressure during the pregnancy that is the subject of the present complaint. [...] to ensure suitable conditions at the time of childbirth an evaluation of the heart should have been carried out at that time, but according to the checkups described and blood pressure readings for the patient there was no increased cardiac risk [...] excessive weight gain is a risk factor [...]. There was no indication of a possible miscarriage. [...] Yes, the treatment followed by the physicians to not perform a Cesarean section and to induce labor for delivery was the adequate one in terms of form, place, and method.”⁵⁷

49. On November 27, 2008, the physician Ángel Miguel Cabarcas, designated by the claimant, submitted an expert report.⁵⁸ Among his observations, he stated that “there was hypertension and if the excessive gain in weight is added to that we will have hypertension in the current pregnancy and excessive gain in weight, all of which tends to establish a condition of PREECLAMPSIA.” Regarding the ultrasound scan of May 19, 1992, he indicated that “on the basis of the gestation period, she was 39 weeks pregnant, but it was mistakenly reported that she was at 36 weeks [...]. This placenta is talking about a pregnancy carried to full term with possible signs of ageing. This points to admitting Ms. Britez Arce to the hospital and conducting routine lab tests, examining fetal maturity, blood cholesterol levels, ocular fundus (to detect infarcts in the retina and partial detachments in the retina), measuring blood pressure twice a day, monitoring urine, etc. [...] Admittance to the hospital is not the indication of an enlightened person but rather the result of observation and experience that are clearly manifest.” The expert also pointed out that the fact that she was not prescribed any kind of diet, especially since she had antecedents of preeclampsia, indicates failure to provide preventive measures.⁵⁹

50. On November 25, 2009, the judgment of the court of first instance was issued, dismissing the claim because of the following observations:

[...] the expert medical examiner designated in the proceedings (Dr. Daniel F. Adaro) recognized that it is not possible to determine conclusively the cause of death of Ms. Arce, because there was no autopsy carried out immediately after her death (see pages 533 verso and 1208 verso)—impossibility never challenged by any of the parties—and it disrupted the causal connection (set forth in the claim) between the death of Ms. Arce and the care she was given during her pregnancy in the Sardá Mother’s Hospital when stating that “the cause of death of the fetus has no relationship with the cause of death of the mother” (see pages 1028 verso). It was observed that, although for Dr. Adaro, “the woman was poorly managed, which is what led to the death of the fetus,” when making this statement he recognizes that “this does not imply that it was relevant for the cause of death of the mother” (see page 1028 verso).

[...]

To the complexity of the case itself must be added the two criminal cases preceding the issuance of this judgment.

[...]

Six (6) expert reports were prepared. I repeat: six reports. The first prepared by Dr. Carlos Poggi and Florencia Casavilla of the Medical Examiners Corps; the second signed by Dr. Héctor Papagni and Dr. Horacio Schiavo, also from the Medical Examiners Corps of National Justice; one plenary with all the physicians of said institution—except for those already named—from which three other reports emerged: one signed by 31

⁵⁶ Claim for damages. Annex to the brief of January 10, 2016 from the petitioners.

⁵⁷ Expert opinion by Dr. Eduardo R. Barrón, July 24, 2000. Annex to the brief of January 10, 2016 from the petitioners.

⁵⁸ Expert opinion by Dr. Ángel M. Cabarcas, November 27, 2008. Annex to the brief of January 10, 2016 from the petitioners.

⁵⁹ Expert opinion by Dr. Ángel M. Cabarcas, November 27, 2008. Annex to the brief of January 10, 2016 from the petitioners.

physicians, another signed by 5, and the last signed by 4. Finally, the expert report entrusted to Dr. Jorge A. Caccavillani and Dr. Rene Llabot, professors at the University of Córdoba. On the basis of this last report, the complaint argued the establishment of the crime of false expertise and cover-up of the medical examiners who participated in the report signed by 31 of them.

[...]

In my opinion what was required, rather than going back to all the proceedings of the cases processed in the criminal justice system (although logically there would be references and reviews of evidence to be found there), was to move forward with a rigorous review of the treatment provided to the victim during her pregnancy for the purposes of finding, to the extent possible, a response for her death. [...] In line with this kind of idea, a new expert was designated, one specializing in obstetrics (Dr. Barrón).

[...]

d) The criminal cases,

what has been examined up to now does not enable me to conclude, with a degree of certainty relevant to a ruling of this kind, that there was culpability [...]. The case is not clear (we do not know why the victim died) but we do know there is a lack of elements to build a causal chain, which is what is required to move forward with the claim for compensation filed by the complainant. This is only my assessment.

The criminal judge, when issuing the judgment of acquittal of the physicians here, among other considerations, pointed out the following: “the pregnancy occurred within normal parameters, that is without signs of high blood pressure, with reactive fetal monitoring, without any evidence of proteinuria, with normal readings of creatinine levels, without checking the sudden and excessive gain in weight that was alleged, all of this in a patient who had not had a kidney removed surgically, reasons for which the treating physicians were under no obligation to admit the pregnant woman to the hospital at any time prior to childbirth” (see page 2089 of the criminal case). For the judge nor was it “possible to accuse Dr. Anido and Dr. Negro for having transformed the source of licit danger into an illicit one, because on the basis of the documentation that was gathered and in the absence of an autopsy that would have made it possible to establish the causes of death, there was no evidence substantiating the existence of the source of danger, as this situation was understood to be pathological and different from that of the pregnancy” (see pages 289 verso of the criminal case).

[...] it is evident that the criminal judge has not been able to establish the connection between the harmful event (the death of Ms. Arce) and the actions taken by the physicians charged.

[...] Because of that, only by assuming that the guilt of the physicians charged has been proven (which is not what has occurred in this case) can its relevance in the harmful event which is our concern be examined.⁶⁰

51. On June 21, 2011, the complainant requested revoking the return of the brief denouncing Dr. Barrón “who had an express and concrete opinion which was compromised with respect to the issue which is the subject under dispute and whose ruling is pending on which your expertise must focus, because it does not provide sufficient guarantees of certainty of impartiality as required [...]”.⁶¹ On July 5 of the same year, the Court of Appeals dismissed the revocation appeal.⁶²

52. On February 7, 2012, the Civil Appeal Courts issued a judgment of second instance upholding the dismissal of the complaint.⁶³ On May 8, 2012, the extraordinary appeal was denied, pointing out that “the matter ruled upon is based on fact and evidence and common law and procedural law, pertaining to the judges of the case and alien to the extraordinary appeal, and the judgment [...] benefits from substantive grounds of a nature that would support it as a jurisdictional act, which circumvents the objection of arbitrariness [...]. Constitutional guarantees, whose violation is being alleged, thus lack a direct and immediate connection with what is decided.”⁶⁴

5. Case No. 27.080/2011 with Criminal Investigation Court No. 13 for alleged false witness statement

53. On June 7, 2011, a criminal complaint was filed against the expert Eduardo Roberto Barrón.⁶⁵ The ruling in the court of first instance indicates that a disciplinary sanction would be relevant for the failure to recuse, in the administrative courts, without establishing the crime of false testimony, because of which, on October 20,

⁶⁰ Judgment from the court of first instance, November 25, 2009. Annex to the brief of January 10, 2016 from the petitioners.

⁶¹ Revocation request of June 21, 2011. Annex to the brief of January 10, 2016 from the petitioners.

⁶² Ruling of July 5, 2011. Annex to the brief of January 10, 2016 from the petitioners.

⁶³ Judgment of February 7, 2012. Annex to the brief of January 10, 2016 from the petitioners.

⁶⁴ Ruling on the extraordinary legal remedy, May 8, 2012. Annex to the brief of January 10, 2016 from the petitioners.

⁶⁵ Complaint filed on June 7, 2011. Annex to the brief of January 10, 2016 from the petitioners.

2011 he was acquitted.⁶⁶ The complainant filed an appeal, which was upheld by the First Chamber of the Criminal Court on December 13, 2011.⁶⁷ A cassation appeal was also filed, as well as a denial of cassation; both were dismissed.⁶⁸

IV. ANALYSIS OF LAW

A. Right to life,⁶⁹ to personal integrity,⁷⁰ and to health⁷¹, in connection with Article 1.1⁷² of the American Convention and Article 7 of the Belém do Pará Convention.⁷³

54. First of all, the Commission notes that, in its Admissibility Report, it did not expressly include Articles 5 and 26 of the American Convention among the rights that could be considered in the merits stage. Nevertheless, as a result of all the allegations and available evidence in the merits stage, it believes it is relevant to examine both the right to personal integrity and the right to health, because the instant case involves alleged negligence in the medical services provided to Ms. Cristina Brites Arce by the medical staff of the Hospital Público Sardá and which allegedly are cause of her death.

55. The Commission highlights, that throughout both the admissibility and merits procedures, the state heard the facts on which the claim of alleged negligent services was based and therefore, in application of the principle of *iura novit curia*, the Commission shall examine whether or not, in the instant case, the State did violate Articles 5 and 26 of the American Convention.⁷⁴

1. General considerations on the attribution of responsibility

56. Throughout the work of the Commission and the Court, the contents of the obligations for respect and guarantee have been defined in accordance with Article 1.1 of the Convention. Regarding the obligation of

⁶⁶ Judgment of October 20, 2011. Annex to the brief of January 10, 2016 from the petitioners.

⁶⁷ Appeal court judgment of December 13, 2011. Annex to the brief of January 10, 2016 from the petitioners.

⁶⁸ Cassation judgment of February 6, 2012 and dismissal of the complaint appeal of May 21, 2012. Annex to the brief of January 10, 2016 from the petitioners.

⁶⁹ Article 4.1 of the American Convention establishes the following, as applicable: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

⁷⁰ Article 5.1 of the American Convention establishes the following, as applicable: 1. Every person has the right to have his physical, mental, and moral integrity respected.

⁷¹ Article 26 of the American Convention establishes the following: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

⁷² Article 1.1 of the American Convention establishes the following: 1. 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.

⁷³ Article 7. The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;

b. apply due diligence to prevent, investigate and impose penalties for violence against women;

c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;

d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

⁷⁴ The Inter-American Court has established that the inclusion of articles of the American Convention by the IACHR in the merits stage "does not entail a violation of the right to defense [of the State]" in cases where the State has heard the facts that substantiate the alleged violation. See: I/A Court H.R. *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, para. 50.

respect, the Court indicated that: “According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.”⁷⁵ As for the obligation of guarantee, the states must prevent, investigate, and punish all violation of rights recognized by the Convention and also ensure the restitution, if possible, of the violated right and, when appropriate, the provision of reparations for the damages caused by the human rights violation.⁷⁶ International jurisprudence has recognized the power of international courts to weigh the evidence freely, although it has avoided a rigid rule regarding the amount of proof necessary to support a judgment,⁷⁷ as it is essential for the jurisdictional body to pay attention to the circumstances of the specific case and to take into account the limits imposed by the respect for legal certainty and procedural balance between the parties.⁷⁸

57. The Court has also established that the use of circumstantial evidence, *indicia*, and presumptions may be legitimately considered to substantiate a judgment, “so long as they lead to conclusions consistent with the facts.”⁷⁹ Regarding this, the Court has pointed out that the complainant, in principle, must bear the burden of proving the facts on which the allegation is based; nevertheless, it has stressed that, contrary to domestic criminal law, in proceedings for human rights violation, the state cannot rely on the defense that the complainant has failed to present evidence, when it is the state that has control over the means to clarify the facts occurring within its territory.⁸⁰

2. General considerations on Article 26 and the right to health

58. Article 26 of the American Convention establishes the obligation of states parties to ensure the progressive realization of the rights that said statute contains. Although both bodies of the inter-American system⁸¹ have reasserted their competence to rule on possible violations of Article 26 of the American Convention in the framework of the system of individual petitions and cases, this provision had made little progress in the jurisprudence of the inter-American system relative to contentious cases. In its rulings on the matter, the Court has emphasized the interdependence and indivisibility of economic, social, and cultural rights with civil and political rights.⁸²

59. Thus, the Commission considers that the analysis of a concrete case in the light of Article 26 of the American Convention must be conducted at two levels. First of all, it is necessary to establish whether or not the right

⁷⁵ IACHR. Report No. 11/10, Case 12.488, Merits, Members of the Barrios Family, Venezuela, March 16, 2010, para. 91. See also: I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 169.

⁷⁶ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166.

⁷⁷ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 127; *Case of the Miguel Castro Castro Penitentiary v. Peru*, Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 184; *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C. No. 167, para. 86; *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, para. 82.

⁷⁸ I/A Court H.R. *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations, and Costs, Judgment of February 2, 2001. Series C No. 72, para. 71; *Case of Tiu Tojin v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 38; *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 95. *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, para. 82.

⁷⁹ I/A Court H.R. *Case of Velásquez Rodríguez vs. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 130; *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 101; *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 112. *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, para. 95.

⁸⁰ I/A Court H.R. *Case of Velásquez Rodríguez*. Merits, *supra* note 17, para. 135; *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Series C No. 127, para. 134, and the *Case of Ríos et al.* Preliminary Objections, Merits, Reparations, and Costs, *supra* note 10, para. 198.

⁸¹ See, for example, admissibility reports where the possible violation of Article 26 of the Convention has been admitted: Report 29/01. Case 12.249. Jorge Odir Miranda Cortez et al. El Salvador, March 7, 2001; and Report 70/04. Petition 667/01. Admissibility. Jesús Manuel Naranjo Cárdenas et al. (Pensioners of the Venezuelan Aviation Company VIASA). Venezuela, October 13, 2004. See also the ruling on the merits with respect to Article 26 in Report 38/09. Case 12.670. National Association of Ex-Employees of the Peruvian Social Security Institute et al. v. Peru. March 27, 2009. In the same regard, the Court reasserted said competence in the *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”)* v. Peru (Preliminary Objection, Merits, Reparations, and Costs), Judgment of July 1, 2009.

⁸² See, for example: I/A Court H.R. *Case of Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 141; and *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”)* v. Peru (Preliminary Objection, Merits, Reparations, and Costs), Judgment of July 1, 2009, para. 101.

being dealt with in the case stems from “the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States,” as referred to in the text of Article 26. In other words, Article 26 of the American Convention is the one that credits the Charter of the OAS as the direct source of rights, assigning the nature of human rights to the provisions which on the matter can be drawn from said treaty. Because the purpose of the OAS Charter was not to individualize rights but rather to establish an international body, it is necessary to resort to ancillary texts to identify the rights stemming from the provisions of said instrument.

60. At a second level of analysis, the nature and scope of the obligations enforceable upon the State under Articles 1.1, 2, and 26 of the Convention must be taken into consideration, as well as the contents of law involved, as below. The American Convention is relevant in order to establish the criteria that would make it possible to derive specific rights from the OAS Charter, as well as to determine their content and the obligations of the states in connection with them, to the extent that it establishes the parameters for the general rules to interpret this treaty. In that regard, according to said article, the interpretation of the provisions of the American Convention cannot restrict or eliminate rights recognized by the domestic legal system of the states or by any other treaty to which they are a party, nor can it exclude the effects of the American Declaration on the Rights and Duties of Man or other international acts of the same nature. The provision thus enshrines the “pro persona” principle in the inter-American system and provides a key tool for the effective protection of all human rights recognized in the constitutions of the states parties, as well as in the inter-American or universal human rights instruments ratified by them.

61. On the basis of the comprehensive interpretation that Article 26 requires in the light of the provisions of Article 29, the Commission deems it is relevant to refer to the obligations that can be drawn from Article 26 of the American Convention and that can be the subject of rulings by the bodies of the inter-American system in the framework of contentious cases. The Commission has already resorted to the rulings of the Committee on Economic, Social, and Cultural Rights with respect to the notion of progressive realization of rights and the scope of the obligations stemming from it;⁸³ thus it underscores that said concept does not deprive the State’s obligations of all meaningful content; on the contrary, it must be interpreted in the light of the treaty’s general goal of achieving the full realization of the rights involved.⁸⁴

62. In the light of what was previously described, it can be stated that the Commission understands that Article 26 of the American Convention imposes various obligations on the states, which are not confined to a prohibition of regressivity, which is a correlate of the obligation of progressive realization, but it cannot be construed to be the only justiciable obligation in the inter-American system under this norm. Thus the Commission states that, bearing in mind the interpretive framework of Article 29 of the American Convention and Article 26 seen in the light of Articles 1.1 and 2 of the same instrument, at least the following immediate and enforceable obligations can be drawn: i) general obligations of respect and guarantee, ii) application of the principle of nondiscrimination to economic, social, and cultural rights, iii) obligations to take steps or to adopt measures to achieve the enjoyment of the rights incorporated into said article, and iv) offering suitable and effective remedies for their protection. The methodologies or sources of analysis that are relevant for each one of these obligations must be established according to the circumstances inherent to each case.

63. In connection with the enforceable and immediate components of the obligation to take steps and adopt measures, the Committee on ESCR has indicated, for example, that the adoption of measures in itself is not limited or conditioned by any other considerations; because of that, although achieving the effective realization of the rights may be gradual, the adoption of measures or steps for such effects must be deliberate, concrete, and aimed as clearly as possible at their enforcement. The State also has basic obligations that must meet basic levels of said rights, which are not subject to progressive realization but rather are of an immediate nature.⁸⁵

⁸³ IACHR. Report No. 38/09. Case 12.670. Admissibility and Merits. The National Association of Ex-Employees of the Peruvian Social Security Institute et al. Peru. March 27, 2009, para. 136.

⁸⁴ United Nations Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties’ obligations (paragraph 1 of Article 2 of the Covenant), adopted at the Fifth Session, 1990, E/1991/23.

⁸⁵ United Nations Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties’ obligations (Article 2, Paragraph 1, of the Covenant), 1990. In that respect, see: IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017) paras. 236 and 237.

64. On the basis of the above, the Commission considers that it is clear that the right to health constitutes one of the economic and social norms mentioned in Article 26 of the Convention and, in that respect, states parties are obliged to ensure their progressive realization, as well as to respect, guarantee, and adopt the measures needed to ensure the enforceability of said rights.

3. Right of pregnant women to life, personal integrity, and health

65. The Commission recalls that the right to life is a prerequisite for the enjoyment of all the other human rights and that without respect for this right all the others are meaningless.⁸⁶ Compliance with Article 4 in connection with Article 1.1 of the American Convention not only assumes that no person's life shall be taken arbitrarily, but it also requires states to take all the appropriate measures to protect and preserve the right to life, in fulfillment of their duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction.⁸⁷

66. Both the IACHR and the Court have ruled on the relationship between the rights to life and personal integrity and the right to health.⁸⁸ The Inter-American Court has interpreted on repeated occasions that the rights to life and personal integrity are directly and immediately linked to care for human health⁸⁹ and that "the lack of adequate medical care" can lead to the violation of these rights.⁹⁰ Likewise, both bodies have pointed out that states are responsible for regulating, on a permanent basis, the provision of services and the implementation of national programs for achieving the delivery of quality public health services, so that they can deter any threat to the right to life and physical integrity of the persons subjected to treatment for health.⁹¹

67. The Court has pointed out that "the fundamental right to life includes [...] also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence,"⁹² which in terms of jurisprudence has also included the provision of health services, among other aspects.⁹³ As for the Committee on Economic, Social and Cultural Rights, it has pointed out that all health services, goods, and facilities must meet the requirements of availability, accessibility, acceptability, and quality.⁹⁴ Both the Commission and the Court have taken these concepts into account and have incorporated them into the analysis of various cases.⁹⁵

68. As for the reproductive health of women, it must be stressed that, since 1998, the Commission indicated that it must rank high in legislative initiatives and health programs nationwide and locally and stated its concern over serious difficulties that women encounter in the public health sector, in general because of the absence of resources, the absence of a regulatory framework for reproductive health, the precariousness of the conditions for the delivery of services, and the shortage of indispensable professionals and materials. It also expressed its concern over the high rates of maternal mortality in the region and the obstacles that women

⁸⁶ IACHR. Case 12.270. Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 185.

⁸⁷ I/A Court H.R. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 80. See also: IACHR, Case of 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 186.

⁸⁸ IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, November 5, 2013. IACHR. Report Access to Maternal Health Services from a Human Rights Perspective. June 7, 2010. Section II.

⁸⁹ I/A Court H.R. *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 130; and *Case of Vera Vera et al. v. Ecuador*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011. Series C No. 226, para. 43.

⁹⁰ I/A Court H.R. *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 130; *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C No. 114, para. 157; and *Case of Vera Vera et al. v. Ecuador*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011. Series C No. 226, para. 44.

⁹¹ I/A Court H.R. *Case of Ximenes Lopes v. Brazil*. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 99. See also: IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, November 5, 2013.

⁹² I/A Court H.R. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 144 and 191.

⁹³ I/A Court H.R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Interpretation of the Judgment of Merits, Reparations, and Costs. Judgment of February 6, 2006. Series C No. 142, para. 161; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146; and *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, paras. 194 to 217.

⁹⁴ UN, Committee on Economic, Social, and Cultural Rights. General Comment No. 14, E/C.12/2000/4, 11 August 2000, para. 12.

⁹⁵ IACHR. Report No. 2/16. Case 12.484. Merits. Cuscul Pivaral et al. Guatemala, April 13, 2016, para. 106; I/A Court H.R. *Case of Poblete Vilches et al. v. Chile*. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 120.

encounter in order to receive adequate healthcare services during pregnancy and after childbirth.⁹⁶ The Inter-American Commission also believes there are certain fundamental obligations that require immediate priority measures, such as the application of measures to reduce preventable deaths because of pregnancy or childbirth, especially so that women can have effective access to emergency obstetric services and to prenatal and postpartum healthcare services.⁹⁷

69. The state's obligations to provide adequate services in connection with pregnancy, childbirth, and postpartum care have been recognized in Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women.⁹⁸ As for the inter-American region, the Belém do Pará Convention establishes the right of women to a life without any violence. Article 7 of the Belém do Pará Convention requires states to act in order to prevent, punish, and eliminate violence against women by adopting a series of public measures and policies which include preventing this violence. These obligations reinforce and complete the obligations that states have under the American Convention.

70. The Belém do Pará Convention has established parameters to identify when an act constitutes violence and defines in its Article 1 that “violence against women shall be understood as any act or conduct based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or in the private sphere.” On the basis of the obligation mentioned above, the states have the obligation to “refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation.”⁹⁹ To enforce this protection, the Court has deemed that it is not enough for states to refrain from violating rights, it is imperative for them to adopt positive measures, to be determined on the basis of the specific needs for protection of the subject of the right and that this duty of the state becomes especially relevant when violations of women's sexual and reproductive rights are involved.¹⁰⁰

71. In connection with these obligations, the Commission observes that the Committee on the Elimination of Discrimination against Women (CEDAW) stated that it is the obligation of states parties to guarantee women's right to safe motherhood and to emergency obstetric services.¹⁰¹ This Committee has stressed that: “Women have to right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.”¹⁰² In addition, when ascertaining whether or not a state has fulfilled its obligations stemming from the Convention on the Elimination of All Forms of Violence against Women, the Committee has evaluated whether the ailments reported by the patient were duly taken into account by the medical staff, whether the corresponding exams were conducted on a timely basis, and whether the quality of the services were adequate in the circumstances or for the pregnancy's stage of development and possible complications that might have come from it.¹⁰³

72. The Commission also notes that the Committee on ESCR has also understood that states have the basic obligation of ensuring adequate prenatal and postpartum maternal healthcare services.¹⁰⁴ The Regional Task Force for the Reduction of Maternal Mortality indicated that maternal health is part of the right to health and that maternal mortality is viewed as an indicator of poorly functioning healthcare systems.¹⁰⁵ As for the Office

⁹⁶ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, Doc.17, October 13, 1998; IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, June 7, 2010, para. 41.

⁹⁷ IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, June 7, 2010.

⁹⁸ Said Convention establishes that: “States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.” Article 12, Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly in its resolution 34/180 of December 18, 1979.

⁹⁹ Belém do Pará Convention, Article 7(a).

¹⁰⁰ I/A Court H.R. Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329, para. 250.

¹⁰¹ CEDAW, General recommendation No. 24, UN Doc. A/54/38/Rev.1, chap. I, Twentieth session (1999).

¹⁰² CEDAW, General recommendation No. 24, UN Doc. A/54/38/Rev.1, chap. I, Twentieth session (1999), para. 20

¹⁰³ Regarding this, see: CEDAW, Views, Communication 17/2008, Forty-ninth session, 27 September 2011, paras. 7.3 and 7.4

¹⁰⁴ Committee on ESCR. General comment No. 14. UN Doc. E/C.12/2000/4, 11 August 2000.

¹⁰⁵ Regional Task Force for the Reduction of Maternal Mortality, *Overview of the Situation of Maternal Morbidity and Mortality: Latin America and the Caribbean*, December 2017.

of the United Nations High Commissioner for Human Rights, it indicated that the state must identify the obstacles hindering the effective enforcement of women's rights to maternal health, for example, on the basis of information about what is happening, who are the ones affected, and mainly which factors prevent women, or certain women, from having a safe pregnancy and a childbirth and from more widely enjoying their rights to sexual and reproductive health. In that framework, it indicates that emergency obstetric care is a basic obligation in line with international law, and it is basic maternal health interventions that rely the most on the sound functioning and coordination of the health system.¹⁰⁶

73. As for preeclampsia and eclampsia, the Commission highlights certain data brought to the fore by the World Health Organization. Thus, the WHO has indicated that hypertensive disorders of pregnancy affect about 10% of all pregnant women around the world and, among them, preeclampsia is noteworthy for its impact on maternal and neonatal health and that, in Latin America, one quarter of all maternal deaths have been associated with these complications.¹⁰⁷ For the WHO, "the majority of deaths related to hypertensive disorders can be avoided by providing timely and effective care to women presenting with such complications." Although the WHO indicates that "the diagnosis, screening and management of pre-eclampsia remain controversial, as does the classification of its severity," it adds that "it is generally accepted that the onset of a new episode of hypertension during pregnancy (with persistent diastolic blood pressure of >90 mm Hg) with the occurrence of substantial proteinuria (>0.3 g/24 h) can be used as criteria for identifying preeclampsia."¹⁰⁸ Likewise, it refers to obesity as one of the risk factors for preeclampsia.

4. Analysis of the case

74. The Commission is not competent to ascertain what caused Ms. Britez's death and, as it has already been established, "for purposes of determining the international responsibility of the State for failing to uphold one of the principles associated with the right to health and tied by its interconnectedness to the rights to life and integrity, it is not necessary to establish the cause of death by clear and convincing evidence."¹⁰⁹

75. Nor is it the Commission's responsibility to appraise the expertise conducted domestically, but the Commission is required to determine whether the state did everything that was reasonably within its reach to prevent Ms. Britez's death, in accordance with its international obligations. In that respect, in a case similar to the present one, the European Court indicated that, as an international court, it was required to investigate whether the domestic authorities did what could be reasonably expected of them and, in particular, as a matter of principle, whether or not they fulfilled their obligation to protect the patient's physical integrity, particularly through the administration of appropriate medical treatment.¹¹⁰

76. Both bodies of the inter-American system have indicated that prevention measures to be enforced upon a state must be determined in the light of the characteristics and circumstances of each concrete case. Specifically, in the instant case, the Commission observes that Ms. Cristina Britez's condition as a pregnant woman, her treatment and death in a public hospital, and the special duties of the state stemming from said condition must be taken into account. In that regard, it must be examined whether or not the state was able to provide adequate healthcare services to Ms. Cristina Britez Arce during her pregnancy and on the morning of June 1, 1992, bearing in mind that this medical care cannot be confined to one single conduct or to one given moment, but must be examined comprehensively.

77. Regarding this, the Commission notes, first of all, that although the State argues that Ms. Britez did not go for pregnancy checkups until the 29th week of her pregnancy, it has not submitted information demonstrating that, at that time, she would have been given specific healthcare information or recommendations to prevent hypertension, despite their knowledge from her clinical records about preeclampsia in a previous pregnancy.

¹⁰⁶ United Nations, Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality, July 2, 2012.

¹⁰⁷ WHO, WHO Recommendations for prevention and treatment of preeclampsia and eclampsia, 2014.

¹⁰⁸ WHO, WHO Recommendations for prevention and treatment of preeclampsia and eclampsia, 2014.

¹⁰⁹ IACHR, Report No. 1, Case 12.695. Merits. Vinicio Antonio Poblete Vilches and family. Chile. April 13, 2016, para. 135.

¹¹⁰ European Court of Human Rights. Case of Mehmet Şentürk and Bekir Şentürk v Turkey. Judgment of 9 April 2013, para. 89.

78. Second, the Commission observes at least two important risk factors that have not been dismissed and which the physicians who took care of Ms. Britez during her checkups should have taken into account, such as: 1) a substantial increase in weight, and 2) prior history of preeclampsia in a previous pregnancy. To this must be added the fact that Ms. Britez, in one of her checkups, presented a blood pressure reading of 130/90, which may be a sign of preeclampsia according to the WHO parameters mentioned earlier.

79. Thus, although the Commission cannot assert that Ms. Britez was suffering from preeclampsia and that it was that illness that led to her death, it can observe that, bearing in mind that preeclampsia and eclampsia trigger high rates of maternal mortality, the attending physicians had the special duty of providing protection and should have provided Ms. Cristina Britez diligent and reinforced medical care, especially considering that, in these cases, “maternal deaths can occur among severe cases, but the progression from mild to severe can be rapid, unexpected, and occasionally fulminant.”¹¹¹

80. The state of Argentina did not provide the necessary documentation to the case file in order to sufficiently demonstrate that it took the steps it should have taken in terms of maternal health services; for example, it did not provide Ms. Britez’s clinical record, which would have made it possible to learn about whether or not basic tests had been administered to detect possible risks to her health and life, along with the fact that said clinical record, which was used as the basis for the expert reports that were prepared internally, was repeatedly questioned by her next of kin in the domestic legal system. The Commission also observes that it does not have information indicating that a comprehensive diagnosis for Ms. Britez had been undertaken on a timely basis, so that she could be given specialized treatment to prevent her life, health, and integrity from being affected, keeping in mind the above-mentioned antecedents of risk.

81. Third and finally, the Commission observes that, on the basis of the expert reports mentioned above, the cause of Ms. Britez’s death was undiagnosed or untreated preeclampsia and, as mentioned, there was no exhaustive checkup based on the techniques that were required and which did not involve any complexity, although it involved a pregnancy including factors that would tend to establish it as a high-risk pregnancy. The Commission observes that the above was ruled by some experts as “very poor care,” pointing out in addition that “there had been poor management of the woman which led to the death of the fetus” (see paragraphs 34 and 50 above). The Commission also notes that, according to the charges of the prosecution, Ms. Britez’s hypoglycemia could well have been related to the high stress she suffered from when notified that her child had died, to which the prosecutor asked the following question: “Why did they not wait for the result before subjecting her to another element of stress such as labor or birth?” As indicated by the prosecutor, at that time, the above had led Ms. Britez to a condition of eclampsia and ultimately to an irreversible cardiopulmonary arrest. As indicated, the Commission cannot establish the cause of Ms. Britez’s death; nevertheless, the information that has been provided does reasonably indicate that Ms. Britez was subjected to a situation of anxiety and stress.

82. In connection with the above, the Commission notes that the investigation that was undertaken did not ultimately ascertain the responsibilities of the physicians involved, basically because it did not manage to clearly and convincingly clarify the causes of Ms. Britez’s death (see above paragraphs 29 and 50). In that respect, nor did that investigation make it possible to consider or substantiate that the physicians acted adequately, in accordance with the specific circumstances that the condition and development of the pregnancy merited. In that respect, the expert reports that were drafted in the instant case and that contain explicit references to the fact that the medical care provided was inadequate have not been discredited either (see paragraphs 34 and 35 above).

83. In view of all of the above, the Commission deems that, because of the omissions indicated and the information indicating that the physicians did not act diligently to safeguard Ms. Britez’s rights, the state of Argentina has not proven that it adopted the measures that were reasonably required to safeguard her rights. These omissions were also verified, despite the state’s special duty to protect Ms. Britez’s rights as a pregnant woman, who as indicated required the adoption of specific measures because of her condition as a woman and

¹¹¹ WHO, [WHO Recommendations for prevention and treatment of preeclampsia and eclampsia](#), 2014.

her pregnancy. Therefore, the Commission concludes that the state of Argentina is responsible for the violation of the rights to health, life, and integrity, as set forth in Articles 26, 4.1, and 5.1 of the American Convention, in connection with the obligations in Article 1.1 of the same instrument, as well as for the violation of Article 7 of the Belém do Pará Convention, to the detriment of Ms. Cristina Britez Arce.

C. Rights to a fair trial and judicial protection (Articles 8.1¹¹² and 25.1¹¹³ of the American Convention, in connection with Article 1.1 of the same instrument) and Article 7 of the Belém do Pará Convention¹¹⁴

1. General considerations

84. The obligation of states to guarantee includes the duty to investigate and punish all violations of the rights recognized by the Convention and to ensure, in addition, the restitution, if possible, of the right that was violated and, if appropriate, the reparations for the damages caused by the human rights violation.¹¹⁵

85. The Commission has underscored that the obligation of states to act with due diligence includes facilitating access to suitable and effective legal recourses to tackle a human rights violation.¹¹⁶ As indicated by the Commission, the effectiveness of a recourse must be understood in connection with its capacity to ascertain the existence of violations of fundamental rights, to remedy them, to provide reparations for the damage caused, and to make it possible to punish those responsible.¹¹⁷

86. The Commission, citing the Inter-American Court, has indicated that recourses cannot be deemed effective if they turn out to be illusory as a result of a denial of justice, such as when there is unwarranted delay in issuing a judgment. The Commission has also established that an essential element of effectiveness is timeliness; in that respect, the right to judicial protection requires courts to adjudicate and decide cases expeditiously, particularly with respect to urgent cases.¹¹⁸

87. In cases of violence against women, the generic obligations laid out in Articles 8 and 25 of the American Convention complete and reinforce each other, for those states that are parties, with obligations stemming from the specific inter-American treaty, that is, the Belém do Pará Convention. Article 7 of the Belém do Pará Convention requires states to also undertake actions to prevent, punish, and eradicate violence against women. The Inter-American Court has also asserted that, “when dealing with an act of violence against a woman, it is

¹¹² Article 8.1. 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.

¹¹³ Article 25(1). 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.

¹¹⁴ Article 7. The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;

b. apply due diligence to prevent, investigate and impose penalties for violence against women;

c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;

d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

¹¹⁵ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166.

¹¹⁶ IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007.

¹¹⁷ IACHR, Access to Justice as Guarantee of Economic, Social, and Cultural Rights. Study of the standards set by the Inter-American System of Human Rights. OEA/Ser.L/V/II.129. Doc. 4. September 7, 2007, para. 248.

¹¹⁸ IACHR. Report No. 111/10. Case 12.539. Merits. Sebastián Claus Furlan and Family. Argentina. October 21, 2010, para. 94.

especially important for authorities in charge of the investigation to pursue it with determination and effectiveness, bearing in mind society's duty to reject violence against women and the state's obligations to eradicate it and to build up the victims' trust in state institutions for their protection."¹¹⁹

88. Finally, with respect to the guarantee of a reasonable delay envisioned in Article 8.1 of the American Convention, the Inter-American Court has established that four elements must be taken into account to determine the reasonableness of the length of time of the proceedings: a) the complexity of the matter, b) the procedural activity of the interested party, c) the conduct of the judicial authorities,¹²⁰ and d) the adverse effect of the duration of the proceedings on the judicial situation of the interested party.¹²¹

2. Analysis of the case

2.1. Due diligence

89. The Commission observes that, in the instant case, a criminal proceeding was filed for culpable homicide on June 15, 1992, against the medical staff of the Hospital Público Sardá which took care of Ms. Britez Arce, and a civil suit for damages was filed against the hospital and the government of Buenos Aires on May 31, 1994.

90. As explained in detail, other criminal proceedings were filed on the basis of the principal investigation for culpable homicide (case 2391); case 21.375 for alleged falsification of a public document; and case 27.985 against the Medical Examiners Corps for alleged false testimony.

91. The Commission observes that the Criminal and Correctional Appeals Court, regarding the case for culpable homicide, indicated that the malpractice hypothesis that was presented was probable; nevertheless, because there were not enough elements to substantiate it, the Court upheld the judgment of the court of first instance that had acquitted the physicians charged.

92. The Commission underscores that, in various courts, as well as in the expert reports prepared, the impossibility of determining with any certainty the cause of Ms. Britez's death, because the autopsy was not conducted immediately after the death, was stressed.

93. Furthermore, the many discrepancies regarding relevant determinations in the many expert reports prepared in the various proceedings must be highlighted. Although a criminal proceeding was filed for the alleged falsification of a public document against the physicians Florencio Casavilla and Carlos Fernando Leoncio Poggi, regarding the expertise conducted, and a criminal proceeding was filed against members of the Medical Examiners Corps for alleged false expertise, the state did not manage to ascertain the truth of what happened to Ms. Britez Arce.

94. It is important to stress that domestic rulings, in both the criminal and the civil courts, were based principally on the results of the expert reports that were prepared on the basis of information appearing in Ms. Cristina Britez's clinical record, because when conducting the autopsy more than one month after her death, it was not possible to ascertain the cause of her death.

95. That said, in both criminal and civil proceedings, Ms. Britez's next of kin questioned on various occasions the validity of that clinical record, stating in detail that it showed evidence of having been tampered. The expert report conducted by the University of Córdoba also pointed out various omissions and errors in the clinical record. In addition, in the judgment of appeal and nullification of case 27.985, of August 6, 1999, in connection

¹¹⁹ I/A Court H.R. Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329, para. 296.

¹²⁰ I/A Court H.R. Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155, para. 196; Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006 Series C No. 148, para. 289; and I/A Court H.R. Case of Baldeón García v. Peru. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, para. 151.

¹²¹ 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; and Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 26, 2012. Series C No. 244, para. 49.

with the accusation of omissions and errors in the clinical record, reference was made to the fact that “the alleged falsehoods and omissions were only discovered after” the medical examiners had worked with it.

96. Despite the above, on the basis of the analysis of the evidence appearing in the case filed with the Commission, there was no line of investigation that had been pursued indicating it had been specifically aimed at effectively clarifying whether or not the clinical record had been tampered with.

97. In its observations on the merits, the state asserted that “the irregularities of the clinical record were not upheld in the domestic courts, where it was considered that they arose from sloppiness and did not reflect the will to tamper with a document”; nevertheless, the state did not provide information on the steps taken by the investigation or evidence that, in the domestic proceedings, would have been sought to reach that conclusion. Furthermore, on the basis of the actions which the Commission has available, it is observed that said assertion about “sloppiness” to which the state is referring was made by the Government of the City of Buenos Aires in its challenge to the civil suit for damages, as established in the judgment of the court of first instance.

98. The Commission considers that, because the clinical record is such an important piece of evidence in the instant case and is the basis for expert reports and subsequently for the court rulings in which it was considered that sufficient elements were not available to ascertain the responsibilities for Ms. Cristina Britez Arce’s death, it is not enough to state that there was no intention to tamper with the document; rather it was the state’s obligation to demonstrate that all necessary lines of investigation were pursued to determine their validity. Clarifying whether or not there had been any tampering with the clinical record was relevant to establish possible criminal or civil responsibilities for the respective reparations.

99. Despite the many expert reports that were prepared, the Commission also observes that the omissions have led to the impossibility, to date, of clearly and convincingly determining what caused Ms. Cristina Britez’s death. The above, as recognized by the authorities themselves, has been an obstacle for the possibility of ascertaining the responsibility of the physicians involved (see paragraphs 29 and 50 above).

100. Finally, the Commission observes that were long periods of time in the civil proceedings during which no steps were taken by the judicial authorities to make any progress and finalize the proceedings. This shall be examined in the following section.

2.2. Reasonable delay

101. The Commission observes that, in June 1992, criminal proceedings were filed for the death of Ms. Cristina Britez Arce and, in December 1998, the prosecutor brought formal charges against the physician Patricia Carmen Anido and the physician Eduardo Mario Negri, professionals of the Hospital Público Sardá. The Commission also observes that, between the filing of the complaint and the prosecutor’s charges, a certain amount of complexity can be observed in terms of the expert reports that were questioned and the related criminal proceedings that were filed, in which the complaints against the experts Casavilla and Poggi and against the Medical Examiners Corps were heard. Nevertheless, since the prosecutor brought charges in December 1998 and the judgment of the court of first instance was issued in July 2003, the Commission does not observe any element being submitted that would have added any complexity to the matter and that would warrant the delay in producing a court judgment. The Commission does not have any information available about any steps that might have been taken over those almost five years.

102. With respect to the civil suit, the Commission finds that there were two lengthy periods of procedural inactivity: i) six years after Mr. Miguel Ángel Avaro filed a lawsuit for damages until Dr. Barrón conducted the expert examination ordered by the court; and ii) more than nine years since that expert report until the issuance of the judgment of the court of first instance that dismissed the lawsuit. Thus, a total of more than 15 years elapsed before the next of kin of Ms. Cristina Britez Arce obtained a ruling on their lawsuit.

103. The statement made by the expert witness Moreno before the Inter-American Court in the case of *Furlán and family v. Argentina* must be stressed as he indicated that proceedings for damages should not last more than two years, indicating that many of the delays fall “under an operative framework of spectator judges.”¹²²

104. In connection with procedural activities of the interested party, the Commission does not observe any obstruction by the next of kin, and the state has not submitted any arguments that would indicate that there is any. In any case, the Court has pointed out that the state, in the exercise of its judicial duty, has its own legal duty, as a result of which the conduct of judicial authorities must not depend exclusively on the procedural initiative of the claimant of the proceedings,¹²³ which is especially relevant when involving proceedings hearing possible human rights violations.

105. Because of all of the above, the Commission concludes that the state of Argentina is responsible for violating the right to a fair trial and to judicial protection as laid out in Articles 8.1 and 25.1 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of the next of kin of Cristina Britez Arce. Likewise, bearing in mind that the specific circumstances in which the Ms. Britez’s death occurred were not investigated with due diligence, because, as indicated, she died without the proper medical care pertaining to her condition as a pregnant woman, the Commission considers that the state is responsible for violating Article 7 of the Belém do Pará Convention.

D. Right to personal integrity of Cristina Britez Arce’s son and daughter in connection with Article 1.1 of the American Convention

106. Regarding the next of kin of victims of certain human rights violations, the Inter-American Commission and Court have indicated that they can be considered as victims as well.¹²⁴ Regarding this, the Court has provided that they can be adversely affected in their mental and moral integrity as a consequence of the specific situations suffered by the victims, as well as the subsequent actions or omission of domestic authorities with respect to these incidents. The Inter-American Court has indicated that the right to integrity of the next of kin can be affected because of the close family ties and the steps undertaken to obtain justice.¹²⁵

107. In the instant case, the Commission has established that the rights of Ms. Cristina Britez Arce’s next of kin to a fair trial and judicial protection, in connection with the right to life, were violated. These circumstances autonomously constitute a source of suffering and powerlessness for them, and to date they are not certain about the cause of her death. The death of their mother with whom they lived, when Ezequiel Martín was 15 years old and Vanina 12 years old, at the height of adolescence, as well as the search for justice and truth, on the basis of the many litigations that were filed, as well as the delay in the investigations, tend to establish the alleged sufferings as obvious.

108. By virtue of the descriptions above, the Commission considers that the state violated the right to mental and moral integrity of Ezequiel Martín and Vanina Verónica Avaro, as established in Article 5.1 of the American Convention in connection with the obligations in Article 1.1 of the same instrument.

¹²² I/A Court H.R. *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246. Statement by the expert witness Gustavo Daniel Moreno at the public hearing held on February 27, 2012 at the Inter-American Court: “[...] proceedings for damages last an average of 4 years; however, they should not last that long. These proceedings should be quicker, not only because of the procedural standards that establish the term for production of evidence and the term that the Judge has to issue the judgment, but also because these terms often fall under an operative framework of spectator judges. The truth is that a process should last no more than 2 years.”

¹²³ I/A Court H.R. *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, para. 69; and I/A Court H.R. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; and *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) v. Peru*, para. 76.

¹²⁴ IACHR. Report No. 11/10. Case 12.488. Merits. Members of the Barrios Family. Venezuela. March 16, 2010, para. 91. IACHR. Report on Terrorism and Human Rights, para. 227; I/A Court H.R. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; and *Case of Bueno Alves v. Argentina*. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 164, para. 102.

¹²⁵ I/A Court H.R. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; and *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 96.

V. CONCLUSIONS AND RECOMMENDATIONS

109. On the basis of the determinations of fact and law, the Inter-American Commission concludes that the state of Argentina is responsible for the violation of the rights enshrined in Article 4.1 (life), Article 5.1 (personal integrity), Article 8.1 (fair trial), Article 25.1 (judicial protection), and Article 26 (health) of the American Convention, in connection with the obligations set forth in Article 1.1 of the same instrument, as well as for the violation of Article 7 (duties of states) of the Belém do Pará Convention, in accordance with the terms specified throughout the report. The IACHR also concludes that the state of Argentina is responsible for the autonomous violation of the personal integrity of Cristina Britez Arce's son and daughter.

110. By virtue of the conclusions above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS MAKES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF ARGENTINA

1. Provide comprehensive pecuniary and non-pecuniary reparations for the human rights violations stated in the present report. The state must adopt pecuniary compensation measures for the benefit of the victim's identified next of kin.
2. Ensure mental health service measures needed by Cristina Britez Arce's son and daughter if that is what they wish and in a coordinated fashion.
3. Provide the necessary training measures so that health personnel attending pregnant women and/or women in labor, both in public and private hospitals, are aware of the standards established in this report.