

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF FURLAN AND FAMILY v. ARGENTINA**  
**OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT**  
**JUDGMENT OF AUGUST 31, 2012**  
**(Preliminary Objections, Merits, Reparations and Costs)**

This case is related, *inter alia*, to the international responsibility of the State for the lack of a timely response by the Argentinean judicial authorities, caused by an excessive delay in the resolution of a civil action against the State, in which the medical treatment of a child with a disability, who subsequently became an adult, depended.

On August 31, 2012 the Inter-American Court of Human Rights declared, unanimously, that the State of Argentina is internationally responsible for the violation to the detriment of Sebastián Furlan, among others, for having exceeded a reasonable time-frame for the civil action; violation of the right to judicial protection and right to private property, and non-compliance with the obligation to guarantee, without discrimination, the right to a fair trial and right to personal integrity. Similarly, the State is internationally responsible for the infringement of the right to personal integrity and right to a fair trial of the next of kin of Sebastián Furlan, namely: Danilo Furlan (father), Susana Fernández (mother), Claudio Furlan (brother) and Sabina Furlan (sister).

**I. Preliminary objections**

The State filed three preliminary objections: i) failure to exhaust domestic remedies; ii) lack of jurisdiction *ratione materiae* of the Inter-American Court to hear arguments regarding the consequences of the application of Law 23.892 of the debt consolidation regimen, and iii) violation of the State of Argentina's right to defend itself during the substantiation of the case before the Inter-American Commission.

After analyzing their admissibility the Court rejected the three preliminary objections filed by Argentina. Regarding the preliminary objection of failure to exhaust domestic remedies, the Court concluded that the State changed its argument regarding the purpose and aim of the remedy that allegedly had to be exhausted; therefore, the Court deemed that the claims made in the response to petition were not presented at the proper procedural stage before the Commission, thus failing to comply with one of the formal requirements for a preliminary objection based on failure to exhaust domestic remedies. In regards to the objection of lack of jurisdiction *ratione materiae*, the Court expressed that: i) from the textual interpretation and taking into account the purpose and object of the treaty, the application of the reservation made to Article 21 of the American Convention clearly cannot be extended to the arguments made by the Inter-American Commission for the alleged violation of Article 25 of that treaty, and ii) in the instant case the reservation made by Argentina is not applicable, insofar as the Court was not asked to review an economic policy of the government. Lastly, in relation to the preliminary objection of the alleged violation of the State's right to defend itself, the Court considered that the State was aware of the facts supporting the alleged violation of Article 5 of the Convention to the detriment of Sebastián Furlan and his family from the outset of the proceedings before the Commission; therefore, it could have expressed its position had it considered it pertinent; thus, the Commission could apply the *iura novit curia* principle or consider another classification of the same facts, without this implying a violation of the State of Argentina's right to defend itself.

## II. Merits

### a. Summary of the facts

On December 21, 1988, at the age of 14, Sebastián Furlan entered a field located near his home, property of the Argentinean Army, in order to play. There was no wire fencing or perimeter wall to prevent access to the property, to the extent that "it was used by children for playing different games, relaxing and practicing sports." Once inside the premises, the minor attempted to hang from a crossbeam of one of the installations, whereupon a beam weighing approximately 45 to 50 kilograms fell on him, hitting him hard on the head and immediately causing him to lose consciousness.

Sebastián Furlan was admitted into the intensive care unit of Hospital Nacional Posadas, and was diagnosed with encephalic cranial trauma with loss of consciousness, in a Grade II-III comatose state, with a fractured right parietal bone. He was taken to the operating room to undergo surgery for a "right extradural hematoma." After the surgery Sebastián Furlan remained in a Grade II coma until December 28, 1988, and then in a vigil coma until January 18, 1989.

As a consequence of the accident his father, Danilo Furlan, with the assistance of an attorney, filed a civil action on December 18, 1990 before the National Civil Court and Federal Commercial Court No. 9 against the State of Argentina, to claim compensation for damages stemming from the disability resulting from his son's accident. On February 27, 1996 the judge ordered the transfer of the action to the Ministerio de Defensa - Estado Mayor General del Ejército (Ministry of Defense - National General Staff of the Army, hereinafter "EMGE", "the defendant" or "the respondent"). On September 3, 1996 the respondent filed the answer to the complaint and a preliminary objection based on the statute of limitations.

Moreover, the Juvenile Defender's Office (Asesoría de Menores) submitted a brief on October 24, 1996, stating that because Sebastián Furlan had reached adult age at that time, the institution could not represent him. Subsequently, on October 21, 1997 Sebastián Furlan's attorney asked the court to authorize the introduction of evidence. On October 24, 1997 the judge announced a 40-day period for the collection of evidence in the proceedings. On November 14, 1997 Sebastián Furlan's attorney introduced the documentary evidence, evidence related to requests for information, statements and expert witness's statement, and also requested the appointment of a doctor and a psychiatrist as expert witnesses.

On March 2, 2000 the court certified that no further evidence was pending production. On March 6 it ordered the parties to submit their arguments on the evidence that had been produced. On April 6, 2000 the petitioner's attorney submitted his arguments on the merits of the evidence introduced in the proceedings and asked for compensation that would take into account his client's physical and mental disability and include the treatments recommended by the professionals who intervened as expert witnesses. On April 11, 2000 EMGE's attorney submitted her arguments on the merits of the evidence presented, and requested that the case be dismissed. On April 18, 2000, May 23, 2000 and August 22, 2000 the petitioner's attorney submitted motions requesting the judge to issue a ruling.

In the judgment of first instance, issued on September 7, 2000, the court ruled that the complaint was admissible and it established that the injury suffered by Sebastián Furlan was due to negligence by the State, as owner and party responsible for the property. The foregoing was because the property was in a state of abandonment, lacked any type of perimeter fence to prevent people from entering and contained notoriously hazardous elements. The court attributed 30% of the responsibility to Sebastián Furlan and 70% of the responsibility to the State. Consequently, it ordered the National General Staff of the Army to pay Sebastián Furlan the sum of 130,000 pesos plus interest, in proportion to and in keeping with the guidelines established in the judgment.

On September 15 and 18, 2000 both the defendant and the petitioner filed, respectively, a motion of appeal. The appeals court judgment, issued on November 23, 2000 by the First Chamber of the National Court for Federal Civil and Commercial Matters, upheld the judgment.

Regarding the payment of legal costs, the Chamber indicated that “it agree[d]” with the defendant, given that “the distribution of responsibility [...] should be reflected in the assignment of the legal costs,” therefore it established that Sebastián Furlan should assume the payment of the corresponding 30%.

The compensation awarded to Sebastián Furlan was subject to Law 23.982 of 1991, which structured the consolidation of past obligations from cases or title prior to April 1, 1991 that consisted in the payment of sums of money. This law provided two ways to collect compensation: i) deferred payment in cash or, ii) cashing in of consolidated bonds issued for sixteen-year terms. Considering his precarious circumstances and the need to obtain money quickly, Danilo Furlan chose to acquire consolidated bonds in local currency. On March 12, 2003 the State delivered 165.803 bonds to the beneficiary. That same day Danilo Furlan sold those bonds. Bearing in mind that Sebastián Furlan had to pay his attorney’s fees for a value of 49,740 bonds, and that under the terms of the judgment of second instance he had to pay part of the legal costs, Sebastián Furlan ultimately received 116,063 bonds, equivalent to approximately 38,300 pesos, of the 130,000 pesos ordered in the judgment.

Sebastián Furlan received medical treatment immediately after the accident in 1988, after attempting suicide twice, and within the framework of criminal proceedings against him for assaulting his grandmother. In addition, some medical reports performed in the civil proceedings highlighted the need for specialized medical attention. One of the expert witnesses diagnosed that Sebastián Furlan had a disability of 70%.

On August 26, 2009 after several attempts to obtain a pension, Sebastián Furlan again submitted a request for a non-contributory pension for disability. This application was processed in accordance with Law No. 18.910 of 1970 and Regulatory Decree No. 432/97. For this purpose he presented an official medical certificate, certifying that he had 80% disability due to moderate mental handicap. On December 16, 2009 the National Commission for Social Welfare Pensions of the Ministry of Social Development concluded that the right invoked had been proven before the competent national authorities. Sebastián Furlan currently receives a pension, as well as benefits for his children Diego and Adrián. Sebastián Furlan received his Single Disability Certificate on September 23, 2008, valid for ten years.

#### **b. Preliminary considerations on the rights of children and persons with disabilities**

The Court noted that in the instant case, the alleged violations of the rights enshrined in the American Convention are in relation to the fact that Sebastián Furlan was a child at the time of the accident and that, consequently, this accident resulted in his becoming an adult with disabilities. Taking these two facts into account, the Court considered that the alleged violations must be analyzed in light of: i) the international body of law on the protection of children, and ii) the international standards on the protection and guarantee of the rights of persons with disabilities. In this regard, the Court took into consideration that the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (hereinafter “CIADDIS”) defined the term “disability” as a “physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment.” On the other hand, the Convention on the Rights of Persons with Disabilities (hereinafter “CRPD”) establishes that persons with disabilities “include those who have long-term physical, mental, intellectual or sensory deficiencies which, in interaction with other barriers, may hinder their full and effective participation in society on an equal basis with others.”

In this regard, the Court observed that the aforementioned Conventions are taken into account to address the social model for disability, which entails that disability is not exclusively defined by the presence of a physical, mental, intellectual or sensory impairment, but is related to the barriers and limitations that exist socially for persons to effectively exercise their rights. The types of limits or barriers that are commonly encountered by people with functional diversity in society are, among others, physical or architectural types of barriers, communicational, attitudinal and socioeconomic barriers.

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

Therefore, it is necessary for States to promote social inclusion practices and adopt affirmative measures to remove such barriers.

### **c. Reasonable term**

Regarding the timeframe of the proceedings under consideration, the Court observed that the period corresponding to the enforcement stage of the judicial decision, to effectively collect the compensation, in the instant case is part of the proceedings and shall be taken into account to analyze the reasonable term. Therefore, the period analyzed began on December 18, 1990, the date on which the civil action was filed, and concluded on March 12, 2003, the date on which the bonds were paid, meaning approximately 12 years and three months.

The Court applied the reasonable term assessment, analyzing four elements established by the case law 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, and d) the adverse effect of the duration of proceedings on the judicial situation of the interested party.

Regarding the complexity of the matter, the Court concluded that the case did not involve legal or evidentiary aspects or debates that would involve a degree of complexity requiring almost 12 years to resolve. Regarding the procedural activity of the interested party, the Court did not find evidence to suggest that the petitioner's actions in the proceedings were dilatory or could have substantially contributed to the extended period of time it took to resolve proceedings of this nature. In relation to the conduct of the judicial and state authorities, the Court expressed that the State did not demonstrate that the delay of over 12 years was not attributable to the behavior of its authorities, particularly when taking into account that not only did the judicial authorities have direct participation in said proceedings, but several of the delays were attributable to state agents who participated as the defendant party or should have provided information or acted expeditiously in order to guarantee the celerity of the process.

Finally, with regard to the adverse effect on the judicial situation of the person involved in the proceedings, the Court bore in mind that if the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out with more diligence so that the case is resolved quickly. Considering the above, the Court established that in cases of persons in a vulnerable situation, such as the case of a person with a disability, it is essential to take the pertinent measures, such as prioritizing the attention and resolution of the proceedings by the authorities in charge, in order to prevent delays in the processing of the proceedings, to guarantee a prompt resolution and implementation. In this regard, the Court deemed the following to be proven: i) Sebastián Furlan's serious physical and mental health condition caused by the accident and his subsequent need for medical and psychological attention; ii) the two suicide attempts committed by him, information that was reported to the judge which was evidenced by the problems in his early rehabilitation and the need for specialized medical assistance in view of his delicate situation, and iii) the incident which resulted in the order of preventive detention of Sebastián Furlan of February 21, 1994, which showed the grave situation that he was going through. Thus, the Court considered that if the judicial authorities had taken into account Sebastián Furlan's vulnerable condition, it would have been clear that this case called for a higher degree of diligence by the judicial authorities. The main objective of the judicial proceedings was to obtain compensation to cover the debts that Sebastian's family

had accumulated over the years to provide him with rehabilitation and the necessary therapies to diminish the negative effects of the passage of time. Therefore, the Court considered that it was sufficiently proven that the delay in the proceedings in this case had a significant and real impact on the legal situation of the alleged victim and to date the effect is irreversible, given that by delaying the compensation he needed he was also unable to receive the treatment that could have provided him with a better quality of life.

Having analyzed the four elements of the reasonable term assessment, the Inter-American Court concluded that the judicial authorities hearing the civil suit for damages and the claim for compensation did not act with the due diligence or promptness as required by Sebastián Furlan's vulnerable situation, therefore it exceeded the reasonable term, in violation of the right to a fair trial established in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, to the detriment of Sebastián Claus Furlan.

#### **d. Judicial protection and the right to property**

The Court considered that the execution of the judgment that granted the compensation was not complete or comprehensive, as it was deemed proven that Sebastián Furlan should have received 130,000 Argentinean pesos and in reality he collected approximately 38,000 Argentinean pesos, which is significantly lower than the original sum awarded. The Court indicated that the administrative authorities never took into consideration that by applying the payment method established in Law 23.982 of 1991 they greatly decreased the financial compensation awarded to Sebastián Furlan for an adequate rehabilitation and better life conditions, given his vulnerable situation. In this regard, the Court expressed that the authorities that executed the judicial decision should have weighed the vulnerable situation that Sebastián Furlan was in with the need to apply a law that regulated these payment methods. The administrative authority should have anticipated this type of disproportionate impact and proposed alternatives to the type of execution that was most detrimental to vulnerable persons. Therefore, the Court concluded that the enforcement of the judgment that awarded the compensation to Sebastián Furlan was ineffective and resulted in a lack of judicial protection, thus failing to fulfill the purpose of protecting and compensating for the rights infringed that were recognized by means of the judicial decision.

Moreover, the Court observed that in this case there was a correlation between the problems of effective judicial protection and the effective enjoyment of the right to property. In this regard, by applying the proportionality principle to the restriction of the right to property that occurred, the Court indicated that the restriction of Sebastián Furlan's right to property was not proportionate in a strict sense given that it did not contemplate any other option that was less detrimental than the reduction of the compensation awarded to him. No evidence was found in the file of any type of pecuniary or non-pecuniary measure that could have lessened the impact of a decrease in the compensation or any other type of measure suited to the specific circumstances of a person with several disabilities who required, for adequate care, the money already judicially contemplated as a right to which he was entitled. Therefore, in the specific circumstances of this case, the non-payment of the full amount ordered by the court in favor of a person with limited resources in a vulnerable situation called for a much greater justification of the restriction of the right to property and some type of measure to prevent such an excessive and disproportionate effect, which was not demonstrated in this case.

Based on the foregoing, the Court considered that the right to judicial protection and the right to property, enshrined in Articles 25(1), 25(2.c) and 21, in relation to Article 1(1) of the American Convention, were violated to the detriment of Sebastián Claus Furlan.

#### **e. Other judicial guarantees**

The Court expressed that, by not having heard Sebastián Furlan at any stage of the judicial proceedings, the judge was also unable to value his opinions on the matter and, particularly, was unable to verify his specific situation as a person with a disability. Taking the foregoing into account, he deemed that the right to be duly heard and taken into account enshrined in Article

8(1), in relation to Articles 19 and 1(1) of the American Convention, was violated to the detriment of Sebastián Claus Furlan.

Additionally, the Court observed that the judge of the civil action did not notify the Juvenile Defender while Sebastián Furlan was a minor or subsequently when the expert assessments revealed the degree of his disability. Consequently, Sebastián did not enjoy this guarantee which is compulsory in the domestic sphere and that could have also helped, through the powers granted by law, to assist him in the civil proceedings. Bearing in mind the foregoing, in the specific circumstances of the instant case the Juvenile Defender was an essential mechanism to address Sebastián Furlan's vulnerability, given the negative effects produced by the combination of his disability and his family's very limited financial resources, which generated poverty in his environment that disproportionately affected his condition as a person with a disability. Consequently, the Court concluded that the right to judicial guarantees established in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, was violated to the detriment of Sebastián Claus Furlan.

#### **f. Right to personal integrity and access to justice of the family of Sebastián Furlan**

The Court reiterated that the relatives of victims of human rights violations may in turn be victims. The Court has deemed an infringement on the right to mental and moral integrity of some next of kin when the suffering they have endured was due to the actions or omissions of state authorities, considering, among other things, the steps taken to obtain justice and the existence of a close family relationship. The violation of this right has also been declared due to the suffering generated by the facts committed against their loved ones.

In the instant case the Court considered proven that: i) the accident suffered by Sebastián Furlan as well as the duration of the civil proceedings affected the family unit, leading to a permanent state of distress and despair in the family, which ended up breaking the family ties and generating other types of consequences, and given that the Furlan Fernández family did not receive assistance to provide better support for Sebastián Furlan, triggering a number of negative impacts on the family's normal development and functioning; ii) it is evident that the unwarranted delay in the proceedings, as well as the other steps taken by Danilo Furlan in order to obtain other types of help for his son, caused him great suffering; given that not only did he assume almost full responsibility for his son's personal care, but he also took control of the domestic judicial proceedings; iii) the breaking of the family's reality negatively affected Ms. Susana Fernández role in the family, given that it became a family group where her participation was substantially reduced, and she had to assume the financial support for the household; iv) Mr. Claudio Furlan suffered psychologically from this situation to the extent that he constantly relives the separations of his family, he recalls specific details of his brother's accident and his parents' separation, and as a consequence of the distress suffered he built his life plan around his disabled brother and his father, and v) Ms. Sabina Furlan was also affected by the circumstances of the instant case due to the breaking of the family ties and the fact that she had to live on her own with her mother apart from those who were once her dearest loved ones, her two brothers and her father, as well as lack of attention for her during her childhood due to the special care required for her older brother.

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

### **g. General conclusion on access to justice, the principle of non-discrimination and the right to personal integrity of Sebastián Furlan**

The Court referred to the highly vulnerable situation of Sebastián Furlan, as a minor with a disability, living in a family with limited financial resources, based on which the State should have adopted all adequate and necessary measures to address the situation. Indeed, it mentioned that the State had the duty to ensure celerity in the civil proceedings, on which greater opportunities for rehabilitation depended. The Court also concluded that the adequate intervention of the Juvenile Defender was necessary, or to seek a differentiated application of the law governing the enforcement of the judgment, since these measures would have made it possible to remedy, to some extent, the disadvantages faced by Sebastián Furlan. These elements showed that there was *de facto* discrimination associated with the violations of the right to a fair trial, judicial protection and right to property. Also, bearing in mind the facts outlined in the chapter on the legal effects caused to Sebastián Furlan in the context of the civil proceedings, as well as the impact that denying him access to justice had on his possibility of obtaining adequate rehabilitation and health care, the Court considered that the violation of the right to personal integrity was in turn proven. Therefore, the Court declared that the State failed to comply with its obligation to guarantee, without discrimination, the right to access to justice under the terms of Articles 5(1), 8(1), 21, 25(1) and 25 (2)(c) of the American Convention, in relation to Articles 1(1) and 19 thereof, to the detriment of Sebastián Claus Furlan.

### **III. Reparations and costs**

Regarding reparations, the Court established that the Judgment constituted *per se* a type of reparation. In addition, it ordered the State to: i) provide medical and psychological or psychiatric attention, free of charge, immediately, adequately and effectively, to the victims who request it, through its specialized public health institutions; ii) create an interdisciplinary group which, taking into account Sebastián Furlan's opinion, shall determine the most appropriate measures of protection and assistance for his inclusion in social programs, education, vocational programs and work; iii) publish this official summary of the Judgment, only once, in the Official Gazette and in a newspaper of wide national circulation, and the full text of the Judgment on an official website; iv) adopt the measures necessary to ensure that when a person is diagnosed with grave problems or consequences related to a disability, the person or his family group shall be provided with a letter summarizing in a concise, clear and accessible manner the benefits contemplated by Argentinean law, and v) pay the amounts established in the Judgment, for compensation of pecuniary and non-pecuniary damages, and for the reimbursement of costs and expenses, as well as reimbursing to the Victims' Legal Assistance Fund the amount established in the Judgment.

The Court shall supervise full compliance with the Judgment in the exercise of its powers and in compliance with its duties in conformity with the American Convention on Human Rights, and shall deem this case concluded once the State has fully complied with that established therein.

The full text of the Judgment can be accessed through the following link:  
[http://corteidh.or.cr/docs/casos/articulos/seriec\\_246\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_246_ing.pdf)