INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF BRÍTEZ ARCE ET AL. V. ARGENTINA

JUDGMENT OF NOVEMBER 16, 2022

(Merits, Reparations and Costs)

In the C*ase of Brítez Arce et al. v. Argentina*,

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

Ricardo C. Pérez Manrique, President
Humberto Antonio Sierra Porto, Vice President
Eduardo Ferrer Mac-Gregor Poisot
Nancy Hernández López
Patricia Pérez Goldberg
Rodrigo Mudrovitsch

also present,

Pablo Saavedra Alessandri, Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and to Articles 31, 32, 65 and 67 of the Court's Rules of Procedure (hereinafter "the Rules" or "the Court's Rules") delivers this judgment, structured as follows:

[*] Judge Veronica Gómez, a national of Argentina, did not participate in the deliberation and signing of this judgment, pursuant to the provisions of Articles 19(2) of the Court's Statute and 19(1) of the Court's Rules.

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I
INTRODUCTION OF THE CASE AND THE CAUSE OF ACTION

1. *The case submitted to the Court.* – On February 25, 2021, the Inter-American Commission on Human Rights (hereinafter "the Commission") submitted to the Inter-American Court the *Cristina Brítez Arce and family v. Argentina* case. According to the Commission, the case concerns the alleged international responsibility of Argentina (hereinafter also "the State") for acts related to the death of Cristina Brítez Arce and for the lack of due diligence and the violation of a reasonable period of the investigation and of the judicial proceedings concerning the matter. The alleged victim was nine months pregnant. On June 1, 1992, she went to the Ramon Sardá Public Hospital of Buenos Aires (hereinafter "the Sardá Hospital") where she was given an ultrasound scan that indicated a dead fetus and, thus, labor was induced in order to deliver the still-born child. According to the death certificate, Ms. Brítez Arce died that day from "non-traumatic cardiopulmonary arrest." The Commission found that the State was internationally responsible for violating the rights to life, personal integrity and health established in Articles 4(1), 5(1) and 26 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Ms. Brítez Arce. It also found that the State was responsible for violating the rights to a fair trial (judicial guarantees) and to judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, read in conjunction with Article 1(1) thereof, and of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "the Convention of Belém do Pará"), the latter of which, as of the date of ratification by Argentina, to the detriment of the family members of Ms. Brítez Arce identified in the Report on the Merits (hereinafter also "Merits Report"). Finally, the Commission found the State responsible for violating the right to personal integrity, set forth in Article 5(1) of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of Ezequiel Martín Avaro and Vanina Verónica Avaro, children of Ms. Brítez Arce who were minors at the time of the death of their mother.

2. *Procedure before the Commission*.

   a. *Petition.* – On April 20, 2001, Ezequiel Martín Avaro and Vanina Verónica Avaro lodged a petition before the Commission.

   b. *Admissibility Report.* – On July 28, 2015, the Commission issued Report 46/15, in which it declared the case admissible. On October 1, 2015, that Report was notified to the parties.

   c. *Report on the Merits.* – On December 6, 2019, the Commission adopted its Report on the Merits (No. 236/19), pursuant to Article 50 of the Convention.

   d. *Notification to the State.* – On February 25, 2020, the Commission notified the Merits Report to the State, granting it a period of two months to inform on its compliance with the recommendations contained therein. The Commission later granted three extensions to the State to comply with the recommendations.

3. *Submission to the Court.* – On February 25, 2021, the Commission submitted to the Court the acts and omissions of the State identified in its Merits Report "due to the need to obtain justice for the victims, as well as with respect to their position regarding the submission of the case to

the Court."[1] The Court notes with concern that 20 years had elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

4. *Requests of the Commission.* – The Commission requested that the Court declare the international responsibility of the State for the violations identified in its Merits Report. It also asked that the Court order diverse measures of reparation, which are detailed and analyzed in Chapter VIII of this judgment. With respect to Article 7 of the Convention of Belém do Pará, it requested that the Court declare its violation for the acts that occurred as of the date of ratification of that treaty by Argentina.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representative.* – The submission of the case was notified to the State[2] and to the representative of the alleged victims[3] on April 13, 2021.

6. *Pleadings, motions and evidence brief.* – On May 18, 2021, the representative presented his pleadings, motions and evidence brief (hereinafter "pleadings and motions brief"), pursuant to the terms of Articles 25 and 40 of the Rules of the Court. The representative substantially concurred with the Commission's conclusions. In addition, he requested various measures of reparation.

7. *Answering brief.* – On August 20, 2021, the State presented its answering brief in response to the submission of the case and to the pleadings and motions brief, in which it recognized its international responsibility by "accepting the considerations of fact and of law contained in the Report on the Merits."

8. *Final written proceedings and the proceeding to receive statements.* – By Order of March 4, 2022,[4] the President of the Court, in view of the State's recognition of responsibility and in accordance with the authority granted by Articles 15(1), 45 and 50(1) of the Rules, decided not to call a public hearing and, in its place, convoke the Commission and the parties to a public proceeding to receive two statements,[5] as well as to request that the testimony of an expert be received by affidavit.[6] On May 20, 2022, the Court received the statements of the alleged victims Ezequiel Martín Avaro and Vanina Verónica Avaro in a public proceeding convoked for that purpose, which was held virtually by means of a video conference.

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1 The Commission appointed Commissioner Julissa Mantilla Falcón as its delegate. It also named Marisol Blanchard Vera and Jorge Humberto Meza Flores and Analía Banfi Vique, who at the time were the Deputy Executive Secretary and Specialists, respectively, of its Secretariat as legal advisors.

2 By communication of May 18, 2021, as its Agent in this case Argentina named Alberto Javier Salgado, Director of the international Human Rights Litigation Office of the Ministry of Foreign Affairs, and Gonzalo Bueno, Legal Advisor of the International Human Rights Litigation Office of the Ministry of Foreign Affairs; Andrea Pochak, Under Secretary of International Protection and Liaison of the Secretariat of Human Rights; Gabriela Kletzel, Director of the Office of International Legal Affairs in the area of Human Rights of the Secretariat of Human Rights and Rodrigo Albano Robles Tristán, Legal Advisor of the Office of International Legal Affairs in the area of Human Rights of the Secretariat of Human Rights, as Alternate Agents.

3 The representative of the alleged victims is René Federico Garrís.

4 *Cf. Case of Brítez Arce et al. v. Argentina*. Order of the President of the Inter-American Court of March 4, 2022.

5 The statements of Ezequiel Martín Avaro and Vanina Verónica Avaro, son and daughter of Cristina Brítez Arce.

6 Expert opinion of Regina Tamés Noriega, proposed by the Commission.

9. *Amicus Curiae.* – The Court received an *amicus curiae* brief presented by the Center for Reproductive Rights.[7]

10. *Final written arguments and observations.* – On June 16, 2022, the State presented its final written observations and, on the following day, the Commission and the representative submitted their final written observations and final written arguments, respectively.

11. *Evidence and information to facilitate adjudication.* – On June 24, 2022, the Court requested that the State provide information and statistics, as of 1992, on the treatment of obstetrical emergencies and maternal mortality. On July 14, 2022, the State presented the evidence requested by the Court. The representative sent his observations on August 9, 2022. The Commission did not present observations on that evidence.

12. *Deliberation on the case.* – The Court deliberated this judgment during a virtual session held on November 16, 2022.[8]

III
JURISDICTION

13. The Court has jurisdiction to hear this case, pursuant to the terms of Article 62(3) of the Convention inasmuch as Argentina ratified the American Convention on Human Rights on September 5, 1984 and recognized the Court's contentious jurisdiction on that same date. It also has jurisdiction to hear violations of the Convention of Belém do Pará that occurred or continued to occur on or after July 5, 1996, date on which Argentina ratified that treaty.

IV
RECOGNITION OF INTERNATIONAL RESPONSIBILITY

A. Recognition of responsibility by the State and observations of the Commission and the representative

14. The ***State*** recognized its international responsibility and stated that it accepted "the considerations of facts and of law contained in the Report on the Merits." It requested that the Court accept the recognition, order the pertinent reparations and deny the other reparations requested by the Commission. It argued that "the current Government of Argentina has the objective of restoring its traditional policy of cooperation with the inter-American system, that it does not identify with obstinately defending the acts of the State, but rather in administering its interests through proper legal standards and with a human rights focus, ensuring that the victims be repaired."

15. It pointed out that it has adopted diverse political policies to put into practice a solid legal framework that protects the right of women in general, pregnant women and their children to enjoy the highest attainable standard of health, especially regarding care before, during and after childbirth and that, due to the changing circumstances over the past 20 years, the guarantee of non-repetition would not have a transforming impact on what has already been demonstrated in the work of the competent authorities. The State also underscored that in 2019 Argentina achieved the lowest rate of maternal mortality during the period 2009-2019, which is two

[7] The brief was signed by Catalina Martínez Coral, Carmen Cecilia Martínez, Edward Pérez, María Fernanda Perico and Stephanie López. It refers to the obligations of the States and of the health institutions to take measures to prevent, investigate and eradicate acts of obstetric violence that are committed against women.

[8] This judgment was deliberated and adopted during the 154th Regular Session, which was held virtually using technological means in accordance with the Rules of the Court.

percentage points lower than that in the year in which the case was condemned internationally and it pointed out that, according to the Working Group to Examine Periodic National Reports under the Protocol of San Salvador, the advances made by the State indicate that it has implemented the appropriate measures.

16. The ***Commission*** welcomed the State's recognition of international responsibility, which encompasses the totality of the facts and the violations declared in the Merits Report and stated that it is a positive contribution to the development of the process and to the restoration of the victims' dignity. It also approved the State's position, which is consistent with that taken at the stage prior to the submission of the case. It requested that the Court declare the facts as proven and include them in the judgment due to the importance that they have for the victims in establishing the truth of what occurred.

17. The ***representative*** asked that the Court's judgment declare the State's international responsibility for violating the American Convention and the Convention of Belém do Pará and that it order full reparation for violating the rights declared in the Merits Report. He also requested that the transcendence of the requested ruling be taken into account in aligning domestic laws, judicial decisions and administrative and practical programs.

B. Considerations of the Court

B.1 The facts

18. Argentina expressly recognized the facts presented in the Merits Report, which are the basis of the human rights violations recognized by the State. Those facts refer to (i) the death of Cristina Brítez Arce and (ii) the domestic proceedings regarding the case. Consequently, the Court considers that there is no longer any controversy on the factual framework of the case.

B.2 The issues of law

19. The Court notes that the State accepted the claims that appear in the Report on the Merits. Recognition of responsibility expressly encompasses each violation of the Convention referred to by the Commission. With respect to the violations of Article 7 of the Convention of Belém do Pará, the Court understands that such recognition refers to violations that occurred or continued to occur on or after the date of the State's ratification of that treaty. Therefore, the Court holds that there is no longer a controversy on:

a. The violation of Articles 4(1), 5(1) and 26 of the American Convention (rights to life, to personal integrity and to health), read in conjunction with Article 1(1) thereof, to the detriment of Cristina Brítez Arce.

b. The violation of Articles 8(1) and 25(1) of the American Convention (rights to judicial guarantees and to judicial protection), read in conjunction with Article 1(1) thereof, and of Article 7 of the Convention of Belém do Pará, the latter as of July 5, 1996, to the detriment of Ezequiel Martín Avaro and Vanina Verónica Avaro.

c. The violation of Article 5(1) of the American Convention (right to personal integrity), read in conjunction with Article 1(1) thereof, to the detriment of Ezequiel Martín Avaro and Vanina Verónica Avaro.

B.3 The eventual reparations

20. There remains no controversy on the need to grant measures of reparation. However, it is for the Court to decide on the specific measures that should be adopted and their scope, taking into account the requests of the Commission and the representative. This includes specific considerations on the propriety of compensation for pecuniary and non-pecuniary damages, which will be made in the corresponding chapter.

B.4 Assessment of the scope of the recognition of responsibility

21. The Court welcomes the State's recognition of total responsibility, which is a positive contribution to the development of this process, to the validity of the principles that inspire the Convention and to meet the reparatory needs of the victims of human rights violations. Recognition of international responsibility produces full juridical effects in accordance with Articles 62 and 64 of the Rules and has a high symbolic value for the non-repetition of similar acts.

22. Therefore, pursuant to Articles 62 and 64 of the Rules and in exercise of its authority to judicially protect human rights on the international plane and because it is a matter of international public order that transcends the will of the parties, the Court must determine whether an acknowledgement is sufficient to achieve the purposes of the inter-American system. In doing so, the Court is not limited to confirming and taking note of the State's recognition or to verifying the formal conditions of those actions, but rather it must weigh them against the nature and seriousness of the alleged violations, the demands and interests of justice, the particular circumstances of the specific case and the position of the parties in order to determine, to the extent possible and in the exercise of its competence, the truth of what transpired in the case.[9] Thus, the Court deems it necessary to deliver a judgment in which it determines what occurred given the State's international recognition of responsibility and takes into account the evidence gathered. This will contribute to the reparation of the victims, avoid the repetition of similar acts and, in short, meet the purposes of the inter-American jurisdiction.[10]

23. The Court will analyze the scope of the State's international responsibility for violating the rights to life, to personal integrity and to health of Ms. Brítez Arce and for violating the right to personal integrity of Ezequiel Martín Avaro and Vanina Verónica Avaro. In view of the State's broad recognition of international responsibility and the Court's consistent case law on the matter, the Court does not consider it necessary to analyze the violation of the rights to judicial guarantees and to judicial protection, established in Articles 8(1) and 25(1) of the Convention, read in conjunction with Article 1(1) therein, nor the violation of Article 7 of the Convention of Belém do Pará, as of July 5, 1996, to the detriment of Ezequiel Martín Avaro and Vanina Verónica Avaro, children of Cristina Brítez Arce. The Court's declaration may be found in the Operative Paragraph's section of the judgment. Lastly, it will rule on the pertinent reparations.

V
EVIDENCE

A. Admissibility of the documentary evidence

24. The Court received, attached to their principal briefs, various documents presented as evidence by the Commission, the representative and the State (*supra* paras. 1, 6 and 7). As in

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[9] *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213, para. 17 and *Case of Leguizamón Zaván et al. v. Paraguay. Merits, Reparations and Costs.* Judgment of November 15, 2022. Series C No. 473, para. 26.

[10] *Cf. Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs.* Judgment of November 26, 2008. Series C No. 190, para. 26 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 26.

other cases, the Court admits those documents that are presented in a timely fashion (Article 57 of the Rules)[11] by the parties and by the Commission, the admissibility of which was neither opposed nor objected to, nor was their authenticity questioned.[12]

B. Admissibility of the testimonial and expert evidence

25. The Court deems it pertinent to admit the statements made before a notary public[13] and in public proceedings[14] insofar as they meet the object that was defined in Order of the President, which ordered receiving them and defined the purpose of this case.[15]

VI
FACTS

26. In view of the State's recognition of responsibility, the Court will now present the facts of the case developed in the factual framework of the Merits Report, the complementary information presented by the representative and by the victims and the evidence found in the record of the case. To do so, it will refer to: (A) the death of Cristina Brítez Arce and (B) the proceedings in this case.

A. The death of Cristina Brítez Arce

27. Cristina Brítez Arce was a Paraguayan woman who was a seamstress. She was 38 years old and more than 40 weeks pregnant at the time of her death.[16] She was the mother of Ezequiel Martín Avaro and Vanina Verónica Avaro, then 15 and 12 years of age, respectively.

28. Ms. Brítez Arce had her first prenatal appointment on November 25, 1991 at the Argentine League against Tuberculosis, where she related her history of arterial hypertension.[17] She next had an appointment on December 1, 1991 when she was 15 weeks pregnant, at which time a new appointment in four weeks was suggested. On March 10, 1992, she went for the first time to the Sardá Hospital, where she informed on her history of arterial hypertension.[18] The following day, in the same hospital, an obstetric ultrasound scan was performed that indicated that the biparietal diameter of the fetus was compatible with 31 weeks and the femur compatible with 30

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[11] Documentary evidence may be presented, in general and in accordance with Article 57(2) of the Rules, together with the briefs of submission of the case, of pleadings and motions or the answering brief. Evidence presented outside these procedural moments is not admissible, save for the exceptions established in the aforementioned article (force majeure or serious impediment) or if it is a supervening event; in other words, that it occurred after the procedural moments indicated.

[12] *Cf.* Article 57 of the Rules; see, also, *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 28.

[13] The expert opinion of Regina Tamés Noriega, proposed by the Commission.

[14] The statements of Ezequiel Martín Avaro and Vanina Verónica Avaro, son and daughter of Cristina Brítez Arce.

[15] The object of the statements may be found in the Order of the President of the Court of February 17, 2022. *Cf. Case of Brítez Arce et al. v. Argentina*. Order of the President of the Inter-American Court of March 4, 2022.

[16] The documents in the record of the case are not in agreement regarding the number of weeks of pregnancy of Ms. Brítez Arce at the moment of her death, but they do agree that it was more than 40. *Cf.* Report of the expert Dr. E.B. of July 24, 2000 (evidence file, ff. 368 - 369).

[17] *Cf.* Expert opinion of Drs. P.P., R.G., A.L. and J.V. of May 7, 1997 (evidence file, f. 11).

[18] According to the expert opinion of the Catholic University of Córdoba, on the date of this consultation there was no indication of the height or weight of Ms. Brítez Arce, but it did note "Arterial hypertension during the previous pregnancy." Expert opinion of the Catholic University of Córdoba of March 13, 1998 (evidence file, f. 126).

weeks of pregnancy.[19] On that day she was seen by a cardiologist who noted a "history of arterial hypertension" in her clinical history.[20] Ms. Brítez Arce then had checkups at the Sardá Hospital on April 6 and 21 and May 5 and had another obstetrical ultrasound scan on May 19[21] and weekly fetal monitoring since April 27.[22] Between March 10 and June 1, Ms. Brítez Arce gained more than 22 pounds.[23]

29. On June 1, 1992, Ms. Brítez Arce went to the Sardá Maternity around 9 a.m., where she complained of lower back pain, fever and a scant loss of liquid from her genitals. She was given an ultrasound scan that indicated that the fetus was dead and, therefore, an induced labor was attempted to deliver the dead fetus. This procedure began at 1:45 p.m. and ended at 5:15 p.m., when she was moved to the maternity ward with full dilatation.[24] During that time, she had to wait two hours in a chair.[25] According to the death certificate, Cristina Brítez Arce died on that day at 6 p.m. of "non-traumatic cardiopulmonary arrest."

B. Proceedings regarding the death of Ms. Brítez Arce

B.1 Case No. 2,391

30. On June 15, 1992, Miguel Ángel Avaro, father of Ezequiel Martín Avaro and Vanina Verónica Avaro, filed a complaint regarding the death of Cristina Brítez Arce and requested that an autopsy be performed on her and the fetus. He later asked that the autopsy be suspended "because it had been ordered that experts proposed by those who were not a party to the case participate in it."[26] The autopsy was performed on July 25, 1992.

31. On June 24, 1993, according to the Report on the Merits, the forensic experts C.P. and F.C. submitted the first medical expert opinion on the matter, which was declared null and void. On October 4 of the same year, the judge in charge of the case filed a complaint against the experts for falsifying a public document, which gave rise to Case No. 21,375/96 (*infra* para. 35).

32. The University of Buenos Aires Medical School was then asked to provide its expertise, but it informed that it could not accept the request. The Medical Examiners Corps was asked to designate other physicians to submit an expert opinion. On April 25, 1995, Drs. S., P., W., A. and C. presented a second opinion in which they stated that Ms. Brítez Arce was a high-risk patient who should have received a treatment other than that which she was given.[27]

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[19] *Cf.* Expert opinion of Drs. P.P., R.G., A.L. and J.V. of May 7, 1997 (evidence file, f. 12).

[20] Expert opinion of the Catholic University of Córdoba of March 13, 1998 (evidence file, f. 131).

[21] *Cf.* First Chamber of the National Court of Criminal Appeals. Decision of August 6, 1999 (evidence file, f. 25) and expert opinion of the Catholic University of Córdoba of March 13,1998 (evidence file, f. 127).

[22] *Cf.* First Chamber of the National Court of Criminal Appeals. Decision of August 6, 1999 (evidence file, f. 25).

[23] "Such an increase is clearly excessive since the weekly increase considered normal is a little more than a pound at this stage of pregnancy." First Chamber of the National Court of Criminal Appeals, Decision of August 6,1999 (evidence file, f. 23). *Cf.* Expert opinion of Drs. P.P., R.G., A.L. and J.V. of May 7, 1997 (evidence file, f. 13) and expert opinion of Dr. E.B. of July 24, 2000 (evidence file, f. 368).

[24] *Cf.* Expert opinion of Drs. P.P., R.G., A.L. and J.V. of May 7, 1997 (evidence file, f. 12) and First Chamber of the National Court of Criminal Appeals. Decision of August 6, 1999 (evidence file, f. 28).

[25] *Cf.* Statement of Ezequiel Martín Avaro at the virtual public proceedings of May 20, 2022.

[26] Expert opinion of Drs. P.P., R.G., A.L. and J.V. of May 7, 1997 (evidence file, f. 6).

[27] *Cf.* Expert opinion of Drs. P.P., R.G., A.L. and J.V. of May 7, 1997 (evidence file, f. 7) and complaint presented by Miguel Ángel Avaro before the Investigating Judge (evidence file, f. 189).

33. On December 16, 1998, the National Investigating Criminal Prosecutor No. 14 formally charged Drs. P.C.A. and E.M.N. of the Sardá Hospital with manslaughter for "malpractice for not having diagnosed, properly and at the precise moment, the situation of the victim and the fetus, causing a negligent act for not having adopted all the measures of care required by the case, thus not complying with their duty."[28]

34. On July 18, 2003, the two physicians were acquitted because there was a dispute as to whether Ms. Brítez Arce had had a high-risk pregnancy and because there was no attribution of the basic elements of a lack of responsibility. The decision was appealed and upheld by the Criminal Court of Appeals, which stated that "the hypotheses handled by 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 it is not admissible to attribute responsibility to the accused physicians."[29] On December 23, 2003, an extraordinary federal appeal was filed but was declared inadmissible for being time-barred.

B.2 Case No. 21,375/96

35. Case No. 21,375/96 arose out of the complaint presented by the judge of Case No. 2,391 (*supra* para. 31) for the alleged criminal responsibility of Drs. C.P. and F.C. for falsifying a public document and its cover-up. It was later broadened to include falsifying a medical record. At that time a third expert opinion was requested of the Director of the National Academy of Medicine, which was presented on July 11, 1996.

36. Drs. C.P. and F.C. were acquitted and the Office of the Public Prosecutor and the complainant appealed. During this process, the plenary of the Medical Examiners Corps was asked for an expert opinion, without the participation of Drs. C.P. and F.C. and S. and P. Three expert opinions were presented: the principal one, signed by 31 physicians, and two others. One of the other reports, signed by Drs. P.P., R.G., A.L. and J.V. on May 7, 1997, stated that they shared the opinion of the first report and indicated that, in medical matters, the criterion of the attending doctor prevails; in this case, that of the doctor who ordered the examinations that, on May 28, 1992, showed a viable fetus. The plenary opinion was declared null and void by the Fourth Chamber of the Criminal Court of Appeals on September 23, 1997.

37. During the appeal, the Fourth Chamber ordered a seventh expert opinion, which was presented by forensic physicians of the Catholic University of Córdoba on March 13, 1998. This document states that:

> […] Conclusion: according to the facts recorded in the medical record, the patient suffered from eclampsia, acidosis, and brain hemorrhage, which led to her death from an irreversible cardiopulmonary arrest (f. 693).
> […] it was a high-risk pregnancy and the necessary precautions were not taken.
> […] The physicians C.P. and F.C. did not correctly interpret the information indicated in the medical record.
> […] We believe that the most important risk factor for Ms. Brítez Arce and her fetus was the deplorable quality of care that she was given […].[30]

38. This expert opinion also identified deficiencies in the medical record; among them, omissions, altered numbers, unnumbered pages and pages with an incomplete name. There were also flaws in the care of the fetus and the mother during the pregnancy and negligence in the care received on June 1, 1992. It also argued that the experts C.P. and F.C. did not correctly

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28 Office of the Public Prosecutor. Accusation of December 16, 1998 (evidence file, f. 59).

29 Special Federal Appeal of December 23, 2003, presented by René Federico Garrís (evidence file, f. 47).

30 Expert opinion of the Catholic University of Córdoba of March 13, 1998 (evidence file, ff. 111–123).

interpret the information available to them. In addition, it affirmed that their conclusions were "unsubstantiated" and that most of the data in the medical record were interpreted erroneously and did not accord with what actually happened.

39. On October 21, 2002, the Appeals Court upheld the decision of the lower court that acquitted Drs. C.P. and F.C. after taking into account the eighth expert opinion that was presented by the Academic Unit of Obstetrics of the Hospital of Clinics, part of the Medical School of the University of Buenos Aires, which stated, among others, that Cristina Brítez Arce was not a high-risk patient and had a pregnancy of normal evolution and that the care provided to her was adequate. It concluded that "it has not been proved that the accused are responsible for the criminal conduct that has been attributed to them."[31]

B.3 Case 27,985/98

40. On April 1, 1998, Miguel Ángel Avaro, father of Ezequiel Martín Avaro and Vanina Verónica Avaro, presented a criminal complaint against the 31 physicians who issued the plenary expert opinion of May 21, 1997, claiming that it contained false information and that it concealed the causes of the death of Cristina Brítez Arce.

41. On September 7, 1998, Dr. J.A.R. submitted a statement in which he claimed that "a report signed by some 21 forensic physicians reached the office and that it was that questionnaire with the responses […]. 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."[32] He pointed out that "they requested the case file and that they could not rule on obstetric matters." When they were told 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: P.P., R.G., A.L. and J.V. The complaint stated that the Dean of the Medical Examiners Corps admitted to having asked three physicians to draft the responses to be circulated among all the medical examiners and for them to sign the already drafted ruling. The Prosecutor asked that a request for an investigation be issued to determine why, although there were 87 physicians in the Medical Examiners Corps, only 40 in the plenary signed it in three different reports.

42. On April 12, 1999, the judge acquitted the 31 accused physicians. On April 16, 1999, the representative of the victims appealed the acquittal and requested its nullification for lack of sufficient grounds. In his brief, he affirmed that the decision did not take into consideration many of the evidentiary elements that had been submitted.

43. On August 6, 1999, the acquittals were upheld. The tribunal carefully examined the expert opinions prepared for Case No. 2,391 and Case No. 21,375 in which it is indicated that the three opinions of the medical examiners "differ in their technical observations, but that in terms of substance, their conclusions were identical."[33] As to the expert opinion of the Catholic University of Córdoba, it 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."[34]

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31 Judicial Branch of the Nation. Appellate decision of October 21, 2002, (evidence file, f.185).

32 Statement of Dr. J.A.R. of September 7, 1998 (evidence file, ff. 233 – 236).

33 First Chamber of Criminal Appeals. Decision of August 6, 1999 (evidence file, f. 22).

34 First Chamber of Criminal Appeals. Decision of August 6, 1999 (evidence file, f. 32).

44. The appellant filed a writ of cassation, which was dismissed on October 20, 1999 by the National Criminal Cassation Court. On November 2, 1999, a recourse of complaint was filed against the rejected cassation, which was dismissed on March 30, 2000.

45. On May 8, 2000, an extraordinary federal appeal was filed that also sought recusal of "the members of the Supreme Court of Justice […] for the purpose of establishing a high court with members who do not have any authority over the MEDICAL EXAMINERS CORPS."[35] This appeal was ruled inadmissible by the National Criminal Cassation Court on October 17, 2000 because it questioned the assessment of evidence and because it failed to provide any grounds that would prove arbitrariness.

B.4 Civil proceedings for damages. File 42,229/94

46. A civil suit was filed by Miguel Ángel Avaro, on May 31, 1994, against the physicians responsible for the care of Cristina Brítez Arce; against the Sardá Hospital and against the Government of the City of Buenos Aires for negligence, incompetence and carelessness.

47. On July 24, 2000, Dr. E.B. presented the ninth expert opinion in this case, as ordered by the civil judge. The document stated that Ms. Brítez Arce was "38 years of age with a background of high blood pressure prior to the pregnancy," which are factors of risk for arterial hypertension. The pregnancy of Ms. Brítez Arce could thus be considered as a high risk to develop arterial hypertension. However, he added that "the treatment followed by the physicians not to perform a Cesarean section and to induce labor for delivery was the adequate one in terms of form, place and method."[36]

48. On November 27, 2008, Dr. A.M.C., proposed by the claimant, submitted the 10th expert opinion on the matter. Among his observations, he stated that "there was hypertension and an important weight gain in the current pregnancy […] all of which tends to establish a condition of PRE-ECLAMPSIA." With respect to 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 concerns a pregnancy carried to full term with possible signs of ageing. This points to admitting Ms. Brítez 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 an indication of an enlightened person but rather the result of observation and experience that are clearly manifest."[37] The expert also pointed out that Ms. Brítez Arce was not prescribed any kind of diet, which indicated a failure to provide preventive measures.

49. On November 25, 2009, a lower court rejected the claim because, among other reasons, it was not possible to determine conclusively the cause of the death of Ms. Brítez Arce, since an autopsy was not performed immediately after her death and because the criminal judge could not make a connection between the event in question and the acts of the accused physicians.

50. On February 7, 2012, the Civil Appeals Court confirmed the dismissal of the complaint. On May 8, 2012, it rejected the extraordinary appeal against that decision.

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[35] Special Federal Appeal of May 8, 2000, filed by René Federico Garrís (evidence file, f. 353).

[36] Expert opinion of Dr. E.B. of July 24, 2000 (evidence file, f. 365).

[37] Expert opinion of Dr. E.B. of July 24, 2000. Expert opinion of Dr. A.M.C. of November 27, 2008 (evidence file, f. 375).

B.5 Case No. 27,080/2011

51. On June 7, 2011, a criminal complaint was filed against the expert Dr. E.B. The decision of the lower court of October 20, 2011 held that there was no crime of false testimony. On appeal, the First Chamber of the Criminal Court, on December 13, 2011, upheld the decision of the lower court. Appeals of cassation and denial of cassation were filed, both of which were dismissed.

VII
MERITS

52. This case concerns the international responsibility of Argentina for violating the rights to life, to personal integrity and to health, established in Articles 4(1), 5(1) and 26 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Cristina Brítez Arce. It also concerns the violation of the rights to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, read in conjunction with Article 1(1) thereof; the violation of Article 7 of the Convention of Belém do Pará and the violation of the right to personal integrity, set forth in Article 5(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Ezequiel Martín Avaro and Vanina Verónica Avaro, children of Ms. Brítez Arce, who were minors at the time of the death of their mother. Although the State recognized its international responsibility for the violation of the aforementioned rights, the Court will rule in this chapter on (1) the violation of the rights to life, to personal integrity and to health of Cristina Brítez Arce and (2) the violation of the right to personal integrity of Ezequiel Martín Avaro and Vanina Verónica Avaro.

VII-1
RIGHTS TO LIFE, TO PERSONAL INTEGRITY AND TO HEALTH, READ IN CONJUNCTION WITH ARTICLE 1(1) OF THE AMERICAN CONVENTION[38]

A. Arguments of the parties and of the Commission

53. The ***Commission*** argued that the State did not prove that it had adopted the measures that were reasonably required to safeguard the rights of Ms. Brítez Arce in spite of the special duty that it had because she was pregnant. It, therefore, concluded that the State is responsible for violating the rights to life, to personal integrity and to health set forth in Articles 4(1), 5(1) and 26 of the American Convention, read in conjunction with Article 1(1) thereof.

54. The ***representative*** concurred with the arguments presented by the Commission in its Report on the Merits, according to which the State is responsible for violating the rights to life, to personal integrity and to health of Cristina Brítez Arce.

55. The ***State*** recognized its international responsibility for the violations identified in the Report on the Merits.

B. Considerations of the Court

56. In this section, the Court will refer to the violations of the rights to life, to personal integrity and to health of Cristina Brítez Arce, which occurred as a consequence of her death in the Sardá Hospital, located in the city of Buenos Aires. Although the State recognized its international responsibility for violating those rights, the Court finds it necessary to rule on its obligations in

[38] Articles 4(1), 5(1) and 26 of the American Convention

the following manner: (1) the provision of health services during pregnancy, childbirth and post-partum and its relationship to the guarantee of the rights to life and to personal integrity; (2) an analysis of this specific case and (3) its conclusion. This analysis is based on the assumption that Ms. Brítez Arce was in a situation of special vulnerability due to her pregnancy,[39] which places special duties on the State.[40]

B.1 Provision of health services during pregnancy, childbirth and post-partum period and the guarantee of the rights to life and to personal integrity

57. The Court recalls that the State recognized its international responsibility for violating the rights to life, to personal integrity and to health, recognized in Articles 4(1), 5(1) and 26 of the American Convention. For its analysis on the alleged violation of the right to health, it finds it necessary to consider concomitantly the violations of the rights to life and to personal integrity of Ms. Brítez Arce that occurred during her medical care and their relationship with the acts comprising obstetric violence. The Court has recognized that both civil and political rights and economic, social, cultural and environmental rights are inseparable and, therefore, their recognition and enjoyment ineluctably fall under the principles of universality, indivisibility, interdependence and inter-relationship,[41] which means that both categories of rights must be understood integrally and universally as human rights, without any hierarchy, and are enforceable in every case before the competent authorities.[42] Specifically, the UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 22 on the right to sexual and reproductive health, stated:

> The right to sexual and reproductive health is also indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the rights to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality.[43]

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[39] *Cf. Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011, para. 97. *Mutatis mutandis, Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2006. Series C No. 160, para. 298 and *Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments).* Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, para. 128.

[40] Different international instruments contain specific provisions on the special duties of States with respect to pregnancy. The American Declaration of the Rights and Duties of Man states, in its Article VII, that "[a]ll women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid." Similarly, Article 4(2) of the UN Convention on the Elimination of All Forms of Discrimination against Women states that "[a]doption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory" and its Article 12(2) indicates that "[n]otwithstanding the provisions of paragraph I of this article, 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." Argentina ratified this treaty on June 15, 1985.

[41] The Preamble to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") states that "[c]onsidering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified." See, also: *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 Guevara Díaz v. Costa Rica. Merits, Reparations and Costs*. Judgment of June 22, 2022. Series C No. 453, para. 56.

[42] *Cf. Case of Lagos del Campo v. Peru, supra*, para. 141.

[43] On this matter, the UN Committee on Economic, Social and Cultural Rights stated in its General Comment No. 22 on the right to sexual and reproductive health that "the lack of emergency obstetric care services or denial of

58. Article 26 of the American Convention recognizes economic, social, cultural and environmental rights. It is a framework article that integrates different rights and remits to the Charter of the Organization of American States (hereinafter "the OAS Charter"). The Court recalls that "the inclusion of the right to health in the OAS Charter […] is derived from Articles 34(i), 34(l)[44] and 45(h)[45] [and] in different precedents, the Court has recognized the right to health as a right protected by Article 26 of the Convention."[46] This right has been consolidated by a broad regional consensus since it has been explicitly recognized in various constitutions and domestic laws in the region.[47]

59. The Court has also held that the rights to life and to personal integrity are directly and immediately linked to health care[48] and that the lack of adequate medical care may result in the violation of Articles 4(1)[49] and 5(1)[50] of the Convention.

60. The Court reiterates that "health is a fundamental human right essential for the satisfactory exercise of the other rights and everyone has the right to enjoy the highest attainable standard of health that allows them to live with dignity, understanding health not only as the absence of disease and infirmity, but also as a state of complete physical, mental and social well-being, derived from a lifestyle that allows the individual to achieve total balance."[51]

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abortion often leads to maternal mortality and morbidity, which in turn constitutes a violation of the right to life or security, and in certain circumstances can amount to torture or cruel, inhuman or degrading treatment." Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016), para. 10.

[44] Article 34(l) of the OAS Charter establishes that "[t]he Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: […] i) Protection of man's potential through the extension and application of modern medical science; […] l) Urban conditions that offer the opportunity for a healthful, productive, and full life."

[45] Article 45(h) of the OAS Charter establishes that "[t]he Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: […] h) Development of an official social security policy."

[46] *Cf. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349, paras. 106 and 110 and *Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 2, 2021. Series C No. 441, para. 182.

[47] Among them are: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. See, the constitutional norms of Argentina (Art. 10); Barbados (Art. 17(2)(A); Bolivia (Art. 35); Brazil (Art. 196); Chile (Art. 19) Colombia (Art. 49); Costa Rica (Art. 46); Dominican Republic (Art 61); Ecuador (Art. 32); El Salvador (Art. 65); Guatemala (Arts. 93 and 94); Haiti (Art. 19); Mexico (Art. 4); Nicaragua (Art. 59); Panama (Art. 109); Paraguay (Art. 68); Peru (Art. 70); Suriname (Art. 36); Uruguay (Art. 44) and Venezuela (Art. 83). *Cf.* Constitutional Chamber, Supreme Court of Justice of Costa Rica, Resolution No. 13505 – 2006, of September 12, 2006, Considering paragraph III; Constitutional Court of Colombia, Judgments T-859 of 2003 and C-313 of 2014; Supreme Court of Justice of Mexico, Thesis of jurisprudence 8/2019 (10ª). Right of the Protection of Health. Individual and social dimension and Constitutional Court of Ecuador, Judgment No. 0012-09-SIS-CC, October 8. 2009.

[48] *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits Reparations and Costs.* Judgment of November 22, 2007. Series C No. 171, para. 117 and *Case of Manuela et al. v. El Salvador, supra,* para. 183.

[49] *Cf. Case of Gonzales Lluyet al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 298, para. 171 and *Case of Chinchilla Sandoval et al. v. Guatemala*. *Preliminary Objection, Merits, Reparations and Costs.* Judgment of February 29, 2016. Series C No. 312, paras. 170, 200 and 225.

[50] *Cf. Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 7, 2004. Series C No. 114 and *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 22, 2019. Series C No. 395.

[51] *Cf. Case of Poblete Vilches et al. v. Chile, supra*, para. 118 and *Case of Manuela et al. v. El Salvador, supra,* para. 184.

61. Under the general duty to protect health, the State is obligated to guarantee access to essential health services, to ensure effective and quality medical services and to promote better health conditions for the population.[52] This right also encompasses timely and appropriate health care in accordance with the principles of availability, accessibility, acceptability and quality, the application of which will depend on the prevailing conditions in each state. Compliance by the State with its obligation to respect and ensure the right to health must include special care for vulnerable and marginalized groups.[53]

62. Moreover, the Court has ruled on different occasions on the States' specific obligations regarding health care during pregnancy, childbirth and post-partum and has established that they must provide an adequate and differentiated care during those stages.[54] In accordance with the Court's case law, "States must design appropriate health-care policies that permit assistance to be provided by personnel who are adequately trained to attend to births, policies to prevent maternal mortality with adequate pre-natal and post-partum care, and legal and administrative instruments for health-care policies that permit cases of maternal mortality to be documented adequately."[55] The Court has also referred to the relationship between poverty and the lack of adequate medical care as causes of high maternal mortality and morbidity.[56]

63. The Universal System of Human Rights also has treaties that refer to the obligations of States in the area of health care during pregnancy, childbirth and post-partum, which have been interpreted by their respective monitoring bodies. The International Covenant on Economic, Social and Cultural Rights establishes, in its Article 12,[57] that the States Parties recognize the right to the enjoyment of the highest attainable standard of physical and mental health, which includes the obligation to adopt measures to reduce stillbirth. The UN Committee on Economic, Social and Cultural Rights interpreted Article 12 in its General Comment No. 14 by stating that it may be understood as requiring the adoption of measures to improve maternal health and health care before and after birth;[58] in other words, measures to avoid preventable maternal deaths.[59] Later,

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[52] *Cf. Case of Poblete Vilches et al. v. Chile, supra*, para. 118 and *Case of Manuela et al. v. El Salvador, supra*, para. 185.

[53] *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359, para. 39 and *Case of Manuela et al. v. El Salvador, supra*, para. 185.

[54] *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of August 24, 2010. Series C, No. 214, para. 233 and *Cf. Case of I.V. v. Bolivia*. *Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 30, 2016, Series C. No. 329. See also: *Advisory Opinion OC-29/22, supra*, paras. 153–159.

[55] *Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra,* para. 233.

[56] *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra,* para. 233 and *Case of Cuscul Pivaral et al. v. Guatemala, supra*, para. 132. Similarly, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has stated that "[w]omen living in poverty and in rural areas, and women belonging to ethnic minorities or indigenous populations, are among those particularly at risk" of maternal mortality. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/61/338, September 13, 2006, paras. 7 and 10.

[57] "Article 12. 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; […]". International Covenant on Economic, Social and Cultural Rights. Argentina ratified this treaty on August 8, 1986.

[58] *Cf.* UN Committee on Economic, Social and Cultural Rights. General Comment No. 12 (2000), para. 14.

[59] According to the expert opinion presented before the Court by Regina Tamés Noriega, the World Health Organization defines maternal mortality as "[t]he death of a woman while pregnant or within 42 days of termination of pregnancy,

in its General Comment No. 22, it pointed out that the right to sexual and reproductive health is indivisible from and interdependent with the other rights that underpin the physical and mental integrity of individuals and their autonomy, such as the right to life, and that the "lack of emergency obstetric care services or denial of abortion often leads to maternal mortality and morbidity, which in turn constitutes a violation of the right to life or security, and in certain circumstances may amount to torture or cruel, inhuman or degrading treatment."[60] In addition, the Committee stated that lowering "rates of maternal mortality and morbidity requires emergency obstetric care and skilled birth attendance […]."[61]

64. Similarly, the Convention on the Elimination of All Forms of Discrimination against Women, in its Article 12, establishes that the States have the obligation to provide appropriate services during pregnancy, childbirth and afterwards.[62] The Committee for the Elimination of Discrimination against Women, in its General Comment No. 24, referring to that article, pointed out "the duty of States parties to ensure women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources."[63]

65. The European Court of Human Rights (hereinafter "the ECHR") has also ruled on this matter. In *Mehmet Şentürk and Bekir Şentürk v. Turkey*, the ECHR analyzed the denial of medical care under circumstances in which the health care professionals were aware that the life of a pregnant woman was in danger.[64] It held that States must take the necessary measures to save the life of persons under their jurisdiction and that that principle applies in the area of public health. Therefore, in the specific case, the provision of adequate medical care was necessary to protect the life of the patient. The ECHR held that the dead woman was the victim of the obvious

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irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes." Similarly, the Court notes that, according to the expert, the majority of maternal deaths are preventable and maternal mortality is related to structural faults in the health systems, which indicates that, while maternal deaths are preventable, mechanisms do not always exist to prevent them nor to ensure access to justice for the victims. *Cf.* Expert opinion of Regina Tamés Noriega by affidavit of May 11, 2022 (evidence file, ff. 2380 – 2381).

60 *Cf.* UN Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016), para. 10.

61 *Cf.* UN Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016), para. 28.

62 "Article 12. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph I of this article, 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." Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Argentina ratified this treaty on June 15, 1985.

63 *Cf.* Committee on the Elimination of Discrimination against Women. General Comment No. 24 (1999), para. 27.

64 This case concerns the death of Ms. Menekşe Şentürk, who was 34 weeks pregnant when she went to the hospital because she felt a pain. There she was attended by a midwife, who found that Ms. Şentürk was not at the end of her pregnancy and that it did not make sense to alert the physician on call to examine her. As she continued to have pain, her husband took her to another public hospital, where she was examined by another midwife who also did not call the gynecologist on duty. As her pains increased, Mr. Şentürk drove his wife to the Ataturk Research and Teaching Hospital. There she was examined and transferred to the Department of Urology, where they diagnosed a renal colic, prescribed medication and recommended that she return after giving birth. As the pain did not subside, her husband took her that night to the hospital of the Medical School of Ege University. There she was taken to the Department of Gynecology and Obstetrics, where an ultrasound scan showed that the fetus had died and that an immediate operation was necessary to extract it. They were informed that the hospitalization and surgery would have to be paid, for which a deposit of 600 to 700 million Turkish liras was necessary. Mr. Şentürk did not have that sum and, therefore, his wife could not be hospitalized. It was decided to take her to the Hospital of Gynecology and Obstetrics of İzmir (Konak) in an ambulance that did not have medical personnel. Ms. Şentürk died around 11:00 p.m. while she was in the ambulance. *Cf.* ECHR, *Mehmet Şentürk and Bekir Şentürk v. Turkey*, No. 13423/09. Judgment of April 9, 2013.

malfunctioning of hospital services and did not have access to the appropriate emergency care and, thus, it concluded that there was a substantive violation of Article 2 of the European Convention on Human Rights.[65] The ECHR also considered the case of *Elena Cojocaru v. Romania*, which concerned a pregnant woman who was taken to a hospital because it was thought that she was suffering from pre-eclampsia. In spite of her grave condition, the attending physician did not provide emergency medical care, which consisted, among others, in a cesarean procedure. Rather, it was decided to send her to another hospital some 90 miles away, where she died 40 minutes after arrival. The ECHR held that there was a substantive violation of Article 2 of the European Convention and referred to the State's obligation to adopt a normative structure that would require hospitals to take adequate measures to protect the life of patients.[66]

66. The Committee for the Elimination of Discrimination against Women, in its decision on Communication 17/2008 against Brazil in the case of Alyne da Silva Pimentel Teixeira, a Brazilian national of African descent who died as the result of obstetrical complications after having been denied quality maternal health care in both a public and a private health center, considered that the claim referred to the lack of access to medical attention related to the pregnancy and that the death of Ms. Da Silva Pimentel Teixeira could be considered as a case of maternal mortality.[67] It concluded that she did not receive "appropriate services in connection with her pregnancy"[68] and held the State responsible for having failed to comply with its obligations under Article 12(2) of the Convention.[69] In its decision, the Committee also affirmed that "the lack of appropriate maternal health services has a differential impact on the right to life of women."[70]

67. The Office of the UN High Commissioner for Human Rights has also referred to this matter. In its 2022 Report, it recalled that maternal mortality and morbidity are matters of human rights[71] and expressed that "[i]nternational human rights law includes fundamental commitments of States to enable women to survive pregnancy and childbirth as part of their enjoyment of sexual and reproductive health rights and living a life of dignity."[72] Similarly, in a 2010 report on avoidable maternal mortality and morbidity, it stated that preventable maternal deaths may result in State responsibility not only for violating the right to life, but may also imply violations of the right to enjoy the highest attainable standard of physical and mental health, including sexual and

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65 *Cf.* ECHR, *Mehmet Şentürk and Bekir Şentürk v. Turkey*, No. 13423/09. Judgment of April 9, 2013, para. 97.

66 *Cf.* ECHR*, Elena Cojocaru v. Romania*, No. 74114/12. Judgment of March 22, 2016, para. 101.

67 Committee for the Elimination of Discrimination against Women, Alyne da Silva Pimentel Teixeira v. Brazil (Communication No. 17/2008), CEDAW/C/49/D/17/2008, September 27, 2011, para. 7(3).

68 Committee for the Elimination of Discrimination against Women, Alyne da Silva Pimentel Teixeira v. Brazil (Communication No. 17/2008), CEDAW/C/49/D/17/2008, September 27, 2011, para. 7(4).

69 "Article 12. […] 2. Notwithstanding the provisions of paragraph I of this article, 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." Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

70 Committee for the Elimination of Discrimination against Women, Alyne da Silva Pimentel Teixeira v. Brazil (Communication No. 17/2008), CEDAW/C/49/D/17/2008, September 27, 2011, para. 7(6).

71 *Cf.* Office of the UN High Commissioner for Human Rights. Preventable maternal mortality and morbidity and human rights, UN Doc. A/HRC/14/39, April 16, 2010, para. 8 and Office of the UN High Commissioner for Human Rights. 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, UN Doc. A/HRC/21/22, July 2, 2022, para. 9.

72 *Cf.* Report of the Office of the UN High Commissioner for Human Rights. 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, UN Doc. A/HRC/21/22, July 2, 2022, para. 8.

reproductive health, the rights to equality and non-discrimination and the rights to information, education and the enjoyment of the benefits of scientific progress.[73]

68. The Court, thus, finds that States have the obligation to provide adequate, specialized and differentiated health services during pregnancy, childbirth and a reasonable period after birth to ensure the right to health of the mother and to prevent maternal mortality and morbidity.

69. The Court also recalls that the right to life is a fundamental human right and its full enjoyment is a condition for the exercise of other rights.[74] Thus, Article 4(1) of the Convention, read in conjunction with Article 1(1) thereof, which refers to the obligation to respect and guarantee the rights, presumes that no person may be deprived arbitrarily of his or her life (negative obligation) and that States must take all necessary measures to protect and preserve this right (positive obligation).[75] In addition, the right to life is directly and immediately linked to health care and, therefore, the lack of adequate medical care may imply the infringement of Article 4(1) of the Convention.

70. With respect to circumstances similar to this case, the Court notes that the failure of a State to take adequate measures to prevent maternal mortality obviously impacts the right to life of pregnant women and during their post-partum period.[76] Thus, according to the information in the file of the case, the immense majority of maternal deaths are preventable by access to adequate health care and effective procedures during pregnancy and birth[77] to the point that the World Health Organization estimates that between 88% and 98% of maternal deaths are preventable;[78] while UNICEF and the World Bank estimate that statistic to be 80% and 74%, respectively. These numbers are supported by the fact that maternal mortality has been practically eliminated in some countries.[79]

71. The Court concurs with the Special Rapporteur on violence against women, its causes and consequences that maternal deaths are not "mere misfortunes or unavoidable natural disadvantages of pregnancy but rather preventable injustices that Governments are obliged to remedy through their political, health and legal systems."[80]

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[73] *Cf.* Office of the UN Commissioner for Human Rights. Preventable maternal mortality and morbidity and human rights, UN Doc. A/HRC/14/39, April 16, 2010, para. 10.

[74] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 144 and *Case of Poblete Vilches et al. v. Chile, supra*, para. 145.

[75] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 139 and *Case of Aroca Palma et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 8, 2022. Series C No. 471, para*. 87*.

[76] A maternal death is that which occurs in cases of pregnant women and during the 42 days following birth. *Cf.* Special Rapporteur on violence against women, its causes and consequences. Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women, UN Doc. E/CN.4/1999/68/Add.4, January 21, 1999, para. 69.

[77] *Cf.* Expert opinion of Regina Tamés Noriega provided by affidavit on May 11, 2022 (evidence file, fs. 2380 – 2381) and UN Office of the High Commissioner for Human Rights. Preventable maternal mortality and morbidity and human rights, UN Doc. A/HRC/14/39, April 16, 2010, para. 6.

[78] *Cf.* Office of the UN High Commissioner for Human Rights. Technical guidance on the application of a human rights-based approach on the implementation of policies and prorammes reduce preventable mortality and morbidity, UN Doc. A/HRC/21/22, July 2, 2022, para. 3 and World Health Organization. Maternal mortality: helping women off the road to death. WHO Chronicle, vol. 40 (1986), pp. 175–183.

[79] *Cf.* Office of the UN Commissioner for Human Rights*.* Preventable maternal mortality and morbidity and human rights, UN Doc. A/HRC/14/39, April 16, 2010, para. 6.

[80] Special Rapporteur on violence against women, its causes and consequences. Policies and practices that impact the reproductive rights of women and contribute to, cause or constitute violence against women. E/CN.4/1999/68/Add.4, January 21, 1999, para. 70.

72. Moreover, the Court recalls that the right to health during pregnancy, childbirth and post-partum, as an integral part of the right to the enjoyment of the highest attainable standard of physical and mental health,[81] must satisfy the elements of availability, acceptability, quality and accessibility.[82] The Court believes it necessary here to refer specifically to the component of information accessibility. On this point, General Comment No. 22 of the Committee on Economic, Social and Cultural Rights states:

> Information accessibility includes the right to seek, receive and disseminate information and ideas concerning sexual and reproductive health issues generally, and also for individuals to receive specific information on their particular health status.[83]

73. Thus, under the minimum international obligations that govern health care, the Court finds that women who are pregnant or in the post-partum or breast-feeding periods must be fully informed on their medical condition and be assured of access to precise and timely information on reproductive and maternal health during each stage of pregnancy. This information must be based on scientific evidence, delivered without bias, free of stereotypes and discrimination, including a plan for the birth at the health institution where the birth will take place, and the right to maternal/child contact.[84]

74. Moreover, the Court has held that the lack of adequate medical care or problems of accessibility to certain procedures may result in a violation of Article 5(1) of the Convention[85] and that, in the context of pregnancy, women may be subjected to prejudicial practices and specific forms of violence, degrading treatment and even torture.[86] The Special Rapporteur on torture and other cruel, inhuman and degrading treatment has indicated that "[i]n many States women seeking maternal health care face a high risk of ill-treatment, particularly immediately before and after childbirth" and these abuses "range from extended delays in the provision of medical care, such as stitching after delivery to the absence of anesthesia."[87]

75. The Court has specifically ruled on violence during pregnancy, childbirth and afterwards in accessing health services and has held that it is a violation of human rights and is a gender-based form of violence called obstetric violence,[88] which "encompasses all situations of disrespectful, abusive, neglectful treatment or denial thereof that take place during the pregnancy, childbirth or post-partum period, in private or public health facilities."[89]

76. The Court recalls that, under Article 7 of the Convention of Belém do Pará, the States have the duty to prevent, punish and eradicate violence against women and that they must abstain

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81 *Cf.* UN Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016), para. 11.

82 *Cf. Advisory Opinion OC-29/22, supra*, para. 150 and UN Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016), para. 11.

83 *Cf.* UN Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016), para. 18.

84 *Cf. Mutatis mutandis. Advisory Opinion OC-29/22, supra*, para. 158.

85 *Cf. Case of the Girls Yean and Bosico v. Dominican Republic.* Judgment of September 8, 2005. Series C No. 130, paras. 205 and 206 and *Case of Manuela et al. v. El Salvador, supra*, para. 183.

86 *Cf. Case of Manuela et al. v. El Salvador*, *supra,* para. 200 and *Advisory Opinion OC-29/22, supra*, para. 128.

87 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A /HRC/31/57, January 5, 2016, para. 47.

88 *Cf. Advisory Opinion OC-29/22, supra*, para. 160.

89 Inter-American Commission on Human Rights. Violence and discrimination against women and girls: Best practices and challenges in Latin America and the Caribbean. OAS/Ser.L/V/II. Doc. 233, November 14, 2019, para. 181.

from incurring in acts that constitute gender violence, including those that occur during access to reproductive health care.[90] In addition, under that Convention, "[e]very woman has the right to be free from violence in both the public and private spheres" and States must take special account of the vulnerability of pregnant women who are victims of violence.[91] The Convention of Belém do Pará was adopted on June 9, 1994, two years after the events that gave rise to this case, and was ratified by Argentina on July 5, 1996, four years after the death of Cristina Brítez Arce. Thus, it is not possible to attribute international responsibility to the State for violating obligations under that treaty. However, in light of the State's recognition of international responsibility, the Court will take the content of that treaty into consideration in order to characterize obstetric violence.

77. The Court finds that, under the Convention of Belém do Pará, women have the right to live a life free of obstetric violence and the States have the obligation to prevent, punish and abstain from practicing it, as well as to ensure that its agents act accordingly, taking into account the special vulnerability implied during pregnancy and the post-partum period.[92]

78. The Court finds that obstetric violence has been analyzed by various international bodies. The Special Rapporteur on the right of every person to enjoy the highest attainable standard of physical and mental health recognized that "[m]istreatment and violence against women experienced during pregnancy, facility-based childbirth and the post-partum period by medical practitioners, midwives, nurses and hospital staff, also called obstetric violence, is widespread."[93] The Special Rapporteur on violence against women, its causes and consequences identified obstetric violence as that "experienced by women during facility-based childbirth"[94] and pointed out that it is manifested in the "lack of autonomy and decision-making."[95]

79. Similarly, the Committee for the Elimination of Discrimination against Women, in its opinion on Communication No. 138/2018 presented by S.F.M.[96] with respect to Spain,[97] took up the

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[90] *Cf. Advisory Opinion OC-29/22, supra*, para. 160.

[91] *Cf.* Articles 2 and 9. Inter-American Convention to Prevent, Punish and Eradicate Violence against Women "Convention of Belém do Para."

[92] *Cf. Case of Gelman v. Uruguay, supra,* para. 97.

[93] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/50/28, April 14, 2022, para. 44.

[94] Special Rapporteur on violence against women, its causes and consequences. A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, UN Doc. A/74/137, July 11, 2019, para. 12.

[95] *Ibid*., para. 30.

[96] The victim in this case was identified by the Committee as S.F.M. (represented by Francisca Fernández Guillén).

[97] In this case, "the author maintains that obstetric violence is a type of violence that can only be exercised against women and constitutes one of the most serious forms of discrimination. Discrimination is based on gender stereotypes, the purpose of which is to perpetuate stigmas related to women's bodies and women's traditional roles in society with regard to sexuality and reproduction." She also mentioned that "in its general recommendation No. 24 (1999) on women and health, that the only acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. The Committee also emphasizes the importance of access to information to ensuring full enjoyment of the right to sexual and reproductive health." The author notes that, "according to the European Court of Human Rights, restrictions on the adequate and effective provision of information jeopardize women's right to physical and psychological health, with harmful effects in sensitive situations such as pregnancy, and that access to information about a person's state of health must be provided immediately in order to ensure protection in situations where rapid developments in the individual's condition occur and his or her capacity to take relevant decisions is thereby reduced, for example during a pregnancy or labour with complications." Committee on the Elimination of Discrimination against Women, S.F.M v. Spain (Communication No. 138/2018), CEDAW/C/75/D/138/2018, February 28, 2020, paras. 3(3) and 3(4).

definition of obstetric violence of the Special Rapporteur on violence against women[98] and stated that:

> The Committee considers that stereotyping affects the right of women to be protected against gender-based violence, in this case obstetric violence, and that the authorities responsible for analyzing responsibility for such acts should exercise particular caution in order not to reproduce stereotypes. In the present case, the Committee observes that there was an alternative to the situation experienced by the author, given that her pregnancy had progressed normally and without complications and that there was no emergency **when she arrived at the hospital but that, nevertheless, from the moment she was admitted, she was subjected to numerous interventions about which she received no explanation and was allowed to express no opinion** […].[99] (emphasis added)

80. In the inter-American system of human rights, the Follow-up Mechanism to the Convention of Belém do Pará (MESECVI) has recommended that States criminalize obstetric violence and establish "by all appropriate means the elements that constitute a natural process before, during and after childbirth, without arbitrary or excessive medication and guaranteeing the free and voluntary consent of women to procedures related to their sexual and reproductive health. Adopt an intercultural perspective for including indigenous and afro-descendant people in health services and respecting their customs and cultural norms."[100]. Various countries of the region have included references to obstetric violence in their laws;[101] for example, Argentina defines this type

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[98] The decision states: "In this regard, the Committee notes not only the academic articles and reports on the subject of obstetric violence mentioned by the author, but also the recent report submitted to the UN General Assembly by the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence. In her report, the Special Rapporteur defines 'obstetric violence' as the violence experienced by women during facility-based childbirth and affirms that 'this form of violence has been shown to be widespread and systematic in nature.' The Special Rapporteur explains that the root cause of obstetric violence includes labour conditions, resource limitations and power dynamics in the provider patient relationship, which are compounded by gender stereotypes on the role of women. Of particular relevance for the present communication is the Special Rapporteur's assertion that an episiotomy 'may have adverse physical and psychological effects on the mother, can lead to death and may amount to gender-based violence and torture and inhuman and degrading treatment'". Committee on the Elimination of Discrimination against Women, S.F.M. v. Spain (Communication No. 138/2018), CEDAW/C/75/D/138/2018, February 28, 2020, para. 7(3) and Special Rapporteur on violence against women, its causes and consequences. A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, UN Doc. A/74/137, July 11, 2019, paras. 4 and 12.

[99] Committee on the Elimination of Discrimination against Women, S.F.M. v. Spain (Communication No. 138/2018), CEDAW/C/75/D/138/2018, February 28, 2020, para 7(5).

[100] Follow-up Mechanism to the Convention of Belém do Pará. Second Hemispheric Report on the Implementation of the Convention of Belém do Pará, 2012. Recommendation 9.

[101] In Brazil, it is not a federal crime; however, the State of Santa Catarina, by Law 18.322 of 2022, defines obstetric violence as any act by a medical doctor, hospital staff or family member or companion who verbally or physically offends a woman who is pregnant, in labor or even port-partum. Its Article 35 et seq. defines the crimes. Bolivia defines "violence against reproductive rights" in Law 348 of 2013 as "the act or omission that impedes, limits or infringes the right of women to information, guidance, integral attention and treatment during pregnancy, childbirth, post-partum and lactancy; to freely and responsibly decide on the number and spacing o children; to have a maternity period without risk and to choose safe anticontraceptive methods." In Costa Rica, Law 10081 of 2022 does not define obstetric violence, but it refers to the rights of women during the skilled, dignified and respectful care during the pregnancy, childbirth, post-partum and care of the new-born. In El Salvador, Decree 123 defines the rights relating to pregnancy, labor, childbirth and post-partum. In Mexico, there is no federal legislation on the matter; however, the States of Chiapas, Veracruz, Chihuahua, Colima, San Luis Potosí, Durango, Guanajuato, Quintana Roo, Tamaulipas and Hidalgo have defined obstetric violence in their legislation. Panama defines obstetric violence in Law 82 of 2013 as "that exercised by the health personnal over the body and reproductive processes of women, expressed in an abusive, dehumanized, humiliating or rude treatment." Paraguay defines obstetric violence in Law 5777 of 2016 as "conduct exercised by health personnel or empirical midwives on the body of the women and of the physiological or pathological processes present during her pregnancy and the stages related to pregnancy and childbirth. It is at the same time a dehumanized treatment that violates the human rights of women." In Peru, Supreme Decree 004-2019-MIMP identifies obstetric violence as an act of violence against women. Uruguay defines

of violence as "that exercised by health care personnel on the body and the reproductive processes of women, expressed in a dehumanizing treatment, an abuse of the medicalization and the pathologizing of the natural processes."[102]

81. The Court, therefore, finds that obstetric violence is a form of gender-based violence, "prohibited by inter-American human rights treaties, including the Convention of Belém do Pará,"[103] caused by those responsible for the care of women at health institutions, which takes place during pregnancy, childbirth and post-partum and which is mostly, but not exclusively, expressed in a dehumanized, disrespectful, abusive or negligent treatment; in the denial of treatment and of complete information on their state of health and the applicable treatments; in forced or coercive medical procedures, and in the tendency to pathologize the natural reproductive processes, among other threatening manifestations in the context of health care during pregnancy, childbirth and post-partum.

B.2 Analysis of this specific case

82. The Court finds that, during her pregnancy, Ms. Brítez Arce presented various risk factors that were not treated adequately by the health system; among them, her age, an important weight gain, a history of arterial hypertension during a previous pregnancy and a blood pressure of 130/90 at one of the checkups.[104] These circumstances imposed a special duty of protection that obligated her physicians to provide a diligent and augmented care, especially because it was a high-risk pregnancy and the possibility that she might suffer a pre-eclampsia, which is

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obstetric violence in Law 19,580/17 as "[a]ny act, omission and pattern of conduct of health personnel in the reproductive processes of a woman that affects her autonomy to freely decide on her body or the abuse of invasive techniques and proceedings." Venezuela was the first country to adopt the term "obstetric violence" in its laws. The Organic Law on the right of women to a life free of violence, adopted in 2007, defines obstetric violence as "the appropriation of the body and reproductive processes of women by health personnel, which is expressed in a dehumanizing treatment, in an abuse of the medicalization and pathologicalization of the natural processes, bringing with it the loss of autonomy and capacity to freely decide on their bodies and sexuality, negatively impacting on the quality of life of women."

[102] This definition is found in Article 6(c) of Law 26,485 of 2009 "Law of the Integral Protection to prevent, punish and eradicate violence against women in environments in which they develop interpersonal relationships" that, in turn, remits to Law 25,929 of 2004. Article 2 of that law defines the rights of women who are pregnant, in labor and during post-partum. The latter norm is known as the "Law of Humanized Birth" and establishes in its Article 2 that "[e]very woman, who is pregnant, in labor, childbirth and post-partum has the following rights: a) To be informed on the distinct medical procedures that may take place during those processes so that she can freely choose when there are different alternatives; b) To be treated with respect and in an individualized and personalized manner that ensures privacy during the entire process of care and have her cultural patterns taken into consideration; c) To be considered, in her situation of giving birth, as a healthy person so that her participation, as a protagonist in the delivery, be facilitated; d) To natural childbirth, respectful of the biological and psychological moments, avoiding invasive practices and the provision of medication that is not justified by the medical condition of the parturient or the fetus; e) To be informed on the evolution of the childbirth, the status of her son or daughter and, in general, that she is made aware of the different acts of the professionals; f) To not be subjected to any examination or procedure the purpose of which is research, except by her written consent using the protocol of the Committee of Bio-ethics; g) To be accompanied by a person of her confidence and her choice during labor, childbirth and post-partum; h) To have at her side her son or daughter during her stay in the health institution, as long as the new-born does not require special care;. i) To be informed, since pregnancy, on the benefits of maternal lactancy and to receive support to breast-feed; j) To receive advice and information on taking care of herself and the baby; k) To be specifically informed about the adverse effects of tobacco, alcohol and drugs on the baby and on herself."

[103] Inter-American Commission on Human Rights. Violence and discrimination against women and girls: Best practices and challenges in Latin America and the Caribbean, OAS/Ser.L/V/II. Doc. 233, November 14, 2019, para. 182.

[104] According to the World Health Organization, among the criteria for the diagnosis of preeclampsia and eclampsia is the beginning of a new episode of hypertension during pregnancy, characterized by mild to moderate hypertension (diastolic blood pressure of 90 mm Hg or more). *Cf.* World Health Organization. WHO Recommendations for Prevention and Treatment of Pre-eclampsia and Eclampsia,

responsible for high indices of maternal mortality.[105] Nonetheless, Ms. Brítez Arce did not obtain the specialized and diligent medical treatment that she required as a pregnant woman and the risk factors shown in her clinical history. In addition, she was not given specific information on the state of her health; in particular, on the risk of pre-eclampsia and its implication of the high likelihood of maternal mortality. Nor, in spite of her clinical history, did they offer her recommendations on how to prevent or treat the hypertension, which indicates that there was no guarantee of access to precise and timely information on the state of her health.

83. The Court also finds that, on June 1, 1992, Cristina Brítez Arce, 40 months pregnant, went to the Sardá Hospital where she had undergone medical checkups regarding her pregnancy, complaining of lower back pain, fever and a scant loss of liquid from her genitals. She was admitted and was informed that the fetus had died. It was decided to induce birth, a process that lasted from 1:45 p.m. to 5:15 p.m., at which time she was transferred to the maternity ward, where she died**.** There is nothing in the file that shows that Ms. Brítez Arce had received adequate information on the procedure to be followed once she learned that the fetus had died. The Court's attention is also called to the fact that Ms. Brítez Arce remained in labor with a dead fetus for more than three hours, two of them seated in a chair. Although the Court is not called upon to establish whether this course of action of the physicians was adequate or whether medical reasons required inducing labor, the Court finds that, in view of the evidence available in the file of the case, the situation described indicates that the victim was submitted to a state of stress, anxiety and anguish.[106] Therefore, as indicated in the expert opinion presented by the Catholic University of Córdoba, Ms. Brítez Arce "should have been stabilized and evaluated before being submitted to another stress such as induced birth, holding her dead son at her breast." Instead, the procedure of the medical staff that performed the obstetric emergency "exposed the patient to a risk that *a posteriori* was harmfully transformed, to death."[107]

84. The Court recalls that women are in a situation of special vulnerability during or immediately after natural or caesarian childbirth.[108] The state of anxiety, anguish and stress to which Ms. Brítez Arce was subjected, in addition to her vulnerability, made her a victim of dehumanizing treatment. On this matter, the Court notes that the expert opinion of the Catholic University of Córdoba stated that "the patient was ignored while the dead fetus was being diagnosed."[109]

85. Thus, the diagnosis, the decision to subject Ms. Brítez Arce to an induced labor, the lack of complete information on possible alternative treatments and their implications; and the wait of two hours in a chair while the procedure was being carried out subjected the victim to stress, anxiety and anguish that, added to her special vulnerability, resulted in dehumanizing care and the denial of full information on the state of her health and alternatives of treatment, which constitute obstetric violence.

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[105] According to the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, "[a]round 80 per cent of maternal deaths are due to obstetric complications, mainly […] **preeclampsia and eclampsia** […]." (Emphasis added). Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, UN Doc. A/61/338, September 13, 2006, para. 7.

[106] After confirmation that the fetus was dead, blood was taken from Ms. Brítez Arce and it was noted on her medical record that she had hyperglycemia. According to the expert opinion of the Catholic University of Córdoba, this condition "may be due to stress suffered by the patient upon receiving news of the death of her son. Physicians, in their studies on glycemia and stress, say that what most raises the level of glycemia is the death of a close family member […]. The patient was subjected to great stress (the news of the death of her son). Why didn't they wait for the result before subjecting her to another stress, such as labor. Expert opinion of the Catholic University of Córdoba of March 13, 1998 (evidence file, f. 110).

[107] Expert opinion of the Catholic University of Córdoba of March 13, 1998 (evidence file, f. 121).

[108] *Cf. Case of I.V. v. Bolivia, supra,* para. 183.

[109] Expert opinion of the Catholic University of Córdoba of March 13, 1998 (evidence file, f. 120).

B.3 Conclusion

86. In view of the analysis in this section on the State's recognition of international responsibility and on the proven facts, the Court finds that Argentina is responsible for (1) violating the right to health, recognized in Article 26 of the American Convention, read in conjunction with Article (1) thereof, to the detriment of Cristina Brítez Arce; (ii) violating the right to life, established in Article 4(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Cristina Brítez Arce and (iii) violating the right to personal integrity, recognized in Article 5(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Cristina Brítez Arce.

VII-2
RIGHTS TO PERSONAL INTEGRITY, PROTECTION OF THE FAMILY AND OF THE CHILD, READ IN CONJUNCTION WITH ARTICLE 1(1) OF THE AMERICAN CONVENTION[110]

A. Arguments of the parties and of the Commission

87. The ***Commission*** indicated that the violation of the rights to judicial guarantees and to judicial protection of the family members of Cristina Brítez Arce was an autonomous source of their suffering and impotence since questions remain on the cause of her death. It claimed that there could be a logical inference regarding the suffering of Ezequiel Martín, 15 years old, and Vanina Verónica, 12 years old, as a consequence of the death of their mother, the search for justice and truth during the legal proceedings and the delay in the investigations. Thus, the Commission considered that the State violated the right to the mental and moral integrity of Ezequiel Martín Avaro and Vanina Verónica Avaro established in Article 5(1) of the American Convention, read in conjunction with Article 1(1) thereof.

88. The ***representative*** concurred with the arguments presented by the Commission in its Merits Report, according to which the State is responsible for violating the right to personal integrity of the children of Ms. Brítez Arce.

89. The ***State*** recognized its international responsibility for violating the rights identified as violated in the Merits Report.

B. Considerations of the Court

90. The Court has repeatedly affirmed that family members of victims of human rights violations may, in turn, be victims.[111] The Court has held that it can declare the violation of the right to mental and moral integrity of direct family members or other persons with close ties to the victims due to the additional suffering that they have endured as a result of the particular circumstances of the violations committed against their loved ones and for subsequent acts or omissions of State

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[110] Articles 5(1), 17 and 19 of the American Convention.

[111] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 176 and *Case of Leguizamón Zaván et al. v. Paraguay, supra*, para. 87.

authorities regarding those acts,[112] taking into account, among other elements, the steps taken to obtain justice and the existence of a close family tie.[113]

91. In this case, the State recognized its international responsibility for violating the right to personal integrity of the family members of Ms. Brítez Arce who were identified in the Merits Report. This is in addition to statements offered before the Court that verify that Ezequiel Martín and Vanina Verónica, children of Ms. Brítez Arce, have undergone uncertainty, suffering and anguish to the detriment of their mental and moral integrity due to the death of their mother and the acts of State authorities. The Court notes, for example, that Ezequiel Martín, a minor, remained for several hours in the hospital awaiting news regarding his mother the day of her death[114] and that Ezequiel Martín and Vanina Verónica were informed of her death by a nurse.[115]

92. In addition, the harm to their right to personal integrity is due, among others, to the anguish that was produced in not knowing, to this day, the precise cause of the death of their mother; to their feelings of impotence and insecurity for the negligence of the State authorities in the search for justice and truth through legal proceedings; to the delay in the investigations, and to the harm and impact that their mother's death had on their lives when they were adolescents.

93. The Court especially finds that Ms. Brítez Arce, in addition to being a seamstress,[116] was the principal caretaker of Ezequiel Martín and Vanina Verónica and that her death impacted on their life plans. Thus, according to the statement provided to the Court by Ezequiel Martin, who was 15 years old at the moment of the occurrence of the events, the death of his mother caused the break up of his family.[117] He and his sister had to change schools, neighborhoods, friends and their daily life. Ezequiel Martín had to live with his grandparents, who died a short time later, and Vanina Verónica went to live in the countryside with her aunts and uncles. All of this affected the forming of their identities. In addition, due to the circumstances when he was an adolescent, Ezequiel had emotional sequelae that led him to consume drugs and alcohol, affected his performance in school and impeded him from establishing stable relationships and lasting ties.[118] Likewise, the changes in residence that he had to undergo to survive as an adult caused him confusion and insecurity with respect to his future.[119] For her part, Vanina Verónica, after the death of her mother, moved to Rufino in the Province of Buenos Aires and was separated from her brother with whom she had little contact.[120] In addition, she was not able to enter the university, which impacted her work opportunities, and, as her brother, her relationships and ties were affected by the trauma of the death of her mother and by the omissions of the authorities

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112 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 87.

113 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 163 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 87.

114 *Cf.* Statement of Ezequiel Martín Avaro in the virtual public proceedings of May 20, 2022.

115 *Cf.* Statement of Vanina Verónica Avaro in the virtual public proceedings of May 20, 2022.

116 *Cf.* Statement of Vanina Verónica Avaro in the virtual public proceedings of May 20, 2022.

117 Ezequiel Martín stated before the Court that he has a distant relationship with his sister and with his father. Statement of Ezequiel Martín Avaro in the virtual public proceedings of May 20, 2022.

118 Ezequiel Martín stated before the Court that: "I fell into drugs and alcohol […], I didn't have anyone to give me any kind of guidance. Then, truly that, I lost my way, I was a 14 year old kid who suddenly was without a mother, who was my support, then I began to hang out with the wrong persons, not on purpose, but because I didn't have anyone to guide me, I began to have friends who weren't the best and yes, this was a period of much rebellion […] I stopped going to school, I lived in the street, I went to the square with my friends, it took me two years to go back for the last year of high school." Declaration of Ezequiel Martín Avaro in the virtual public proceedings of May 20, 2022.

119 *Cf.* Statement of Ezequiel Martín Avaro in the virtual public proceedings of May 20, 2022.

120 *Cf.* Statement of Vanina Verónica Avaro in the virtual public proceedings of May 20, 2022.

to ensure justice for the family, having as a consequence the impossibility of forming a family and going through a pregnancy for the trauma that she suffered when she was an adolescent.

94. The Court, therefore, finds that the death of Ms. Brítez Arce, in addition to having an impact on the right to personal integrity of her son and daughter, had, as an immediate effect, the total disintegration of the family, The Court recalls that, under Article 17 of the Convention, the family "is the natural and fundamental group unit of society and is entitled to be protected by society and the state." Thus, the Court has held that the State is obligated to favor the development and strengthening of the nuclear family[121] and that children have the right to live with their family, which is called upon to meet their material, emotional and psychological needs.[122]

95. Moreover, Article 19 of the Convention imposes on the States the obligation to adopt the "measures of protection" required by a child's condition. The concept "measures of protection" may be interpreted by considering other provisions in the Convention and in other international human rights instruments. Therefore, in order to establish the content and scope of that article, the Court takes into account the international *corpus juris* on the protection of children; in particular, the Convention on the Rights of the Child, which states in its Preamble that "for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." The Court reiterates that the due protection of the rights of children, as holders of rights, must take into account their characteristics and the need to foster their development, offering them the necessary conditions to live and develop their talents in order to fully exploit their potential,[123] which did not occur in this case.

96. In application of the principle *iura novit curia,* the Court finds a violation of the right to the protection of the family and the rights of the child, established in Articles 17(1) and 19 of the American Convention.

97. Therefore, the Court considers that the death of Ms. Brítez Arce, the distress of her son and daughter for the loss of their mother and the disintegration of their family affected the rights to personal integrity, to protection of the family and of the child regarding Ezequiel Martín Avaro and Vanina Verónica Avaro and, therefore, finds the State responsible for violating the rights established in Articles 5(1), 17(1) and 19 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the aforementioned persons.

VIII
REPARATIONS

98. On the basis of Article 63(1) of the Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[124] The Court has established

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[121] *Cf. Juridical Condition and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 66 and *Case of Movilla Galarcio et al. v. Colombia. Merits, Reparations and Costs*. Judgment of June 22, 2022. Series C No. 452, para. 183.

[122] *Cf. Advisory Opinion OC-17/02, supra*, para. 7 and *Case of the Village of Los Josefinos Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 3, 2021. Series C No. 442, para. 84.

[123] *Cf. Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of October 14, 2014. Series C No. 285, para. 106 and *Case of the Village of Los Josefinos Maasacre v. Guatemala, supra*, para. 92.

[124] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 91.

that the reparations must have a causal link with the facts of the case, the violations declared, the proven harm, as well as the measures requested to redress the resulting harm.[125] The Court, therefore, must observe this concurrence in order to rule appropriately and in keeping with the law.

99. In view of the considerations on the merits and the violations declared in this judgment, the Court will now analyze the claims presented by the Commission and by the representative, as well as the arguments of the State, in light of the criteria established in its case law on the nature and scope of the obligation to repair in order to establish measures to redress the harm caused to the victim.[126]

A. Injured party

100. Pursuant to Article 63(1) of the Convention, the Court considers an injured party to be anyone who has been declared a victim of a violation of a right recognized in the Convention. Therefore, the Court considers Cristina Brítez Arce and her children to be "injured parties."

B. Measures of Rehabilitation

101. The ***Commission*** requested that the Court order the measures of the mental care that Ezequiel Martín Avaro and Vanina Verónica Avaro require, with their consent and that of the State.

102. The ***representative*** did not make any specific observation on this matter.

103. The ***State*** informed that it had reiterated during the friendly settlement negotiations its proposal that the rehabilitative care "could be provided by the public services" or by the determination of a sum of money for that purpose.

104. The ***Court,*** in view of the Commission's request, the statements made during the virtual public proceedings and the information that Ezequiel Martín Avaro does not live in Argentina, will set, in equity, a sum for this concept. It, therefore, orders, as it has done in other cases,[127] that the State pay Ezequiel Martín and Vanina Verónica Avaro, once, the sum, in equity, of USD 5,000.00 (five thousand United States dollars) to each one for psychological and/or psychiatric care. The State shall have a period of one year, as of the notification of this judgment, to make this payment.

C. Measures of Satisfaction

105. The ***Commission*** did not refer to this matter.

106. The ***representative*** requested, in his final written arguments, that the judgment be made public.

107. The ***State*** did not refer to this matter.

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[125] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 91.

[126] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 92.

[127] *Cf. Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 423, para. 233 and *Case of Bedoya Lima et al. v. Colombia. Merits, Reparations and Costs.* Judgment of August 26, 2021. Series C No. 431, para. 183.

108. The ***Court*** orders, as it has done in other cases,[128] that the State publish, within six months of notification of this judgment: (a) the Court's official summary of this judgment, once, in the Official Gazette in a legible and adequate font; (b) the Court's official summary of this judgment, once, in a newspaper of broad national circulation in a legible and adequate font and (c) the complete judgment, available for at least one year, on the official Web sites of the Ministry of Women, Genders and Diversity (hereinafter "MMGyD") and of the Ministry of Health, accessible to the public and starting on the first page of the Web sites.

109. In addition, within six months of the notification of this judgment, the State must make public the Court's judgment on the social media of the MMGyD and the Ministry of Health. The publication shall indicate that the Inter-American Court has delivered a judgment in this case and has declared the international responsibility of Argentina and shall indicate the link to directly access the complete text of the judgment. This publication shall be issued at least five times by each institution, during working hours, and shall remain published on their social media profiles. The State shall immediately inform the Court once it has issued each of the ordered publications, notwithstanding the period of one year to present its first report, ordered in Operative Paragraph 10 of this judgment.

D. Guarantee of non-repetition

110. The ***Commission*** requested that the necessary measures of training be ordered so that the health staff in both public and private hospitals who attend women who are pregnant or are in labor are informed of the standards found in the Merits Report. In its final written arguments, the Commission stated that it welcomed the actions taken by the State in the area of guarantee of non-repetition to the extent that it demonstrates its commitment in the areas of obstetric services and care during pregnancy and childbirth. Nonetheless, the Commission indicated that the information provided does not give details as to whether the training referred to by the State specifically deals with those standards. It observed that the list that the State provided to the Court cites six workshops or training days held between May 2018 and June 2019, which means that there was no information on the training sessions during the past three years nor on the content of the training nor whether it was permanent, its frequency and the indices of impact, among others. Therefore, the available information does not allow an assessment that would enable determining whether the State has adopted sufficient measures that would make it unnecessary to order the requested measure of non-repetition. In addition, the Commission welcomed that the Office of Perinatal and Child Health has indicated in its report that "it will consider for future training the information contained in the Report on the Merits." Therefore, it argued that ordering a measure of reparation similar to the one requested and the respective monitoring by the Court would contribute to the efforts and actions already undertaken by the authorities in the area of the strengthening and the training of the health staff involved in pregnancy, childbirth and post-partum care.

111. The ***representative*** did not specifically refer to this matter.

112. The ***State*** argued that the Court should not order the measures of non-repetition requested by the Commission. It indicated that the existing public policies, directed to ensure the rights of pregnant women, reveal that the current conditions in Argentina are very different than those that existed at the moment of the facts. Thus, it informed on the directive of special protection for the mother and child that is taken from inter-American law and from the Constitution (Article 75(23)), which is manifested in the adoption of laws and public policies directed to broadening

[128] *Cf. Case of Cantoral Benavides v. Peru, Reparations and Costs.* Judgment of December 3, 2001, para. 79 and *Case of Leguizamón Zaván et al. v. Paraguay, supra*, para. 107.

care before, during and after childbirth, among them Law 25,529, which establishes a series of rights and obligatory benefits for women during pregnancy, childbirth and post-partum.

113. It also informed on the measures taken to guarantee disadvantaged persons conditions of socio-economic dignity that would permit them to access maternal and perinatal care, in equity; among them, the "Universal Pregnancy Allowance," an econmic transfer for pregnant women until the birth or the interruption of the pregnancy, which is connected to the "Universal Child Allowance" and which is conditioned on compliance of medical controls that would avoid complications related to pregnancy and on inscription in the SUMAR program, which provides health coverage for those who do not have it.

114. The State also referred to Law 27,610, which recognizes the right of women to legally interrupt their pregnancy and the post-abortion care in the health services; to Law 27,611, known as "A Thousand Days," to protect up to the age of three the mother/child binomial that is without financial resources or in other specific situations, with the object of reducing maternal and neonatal mortality, malnutrition and undernourishment, as well as to prevent violence and to protect emotional and physical development in early childhood.

115. It underscored the creation of the MMGyD, which "institutionally placed the themes of gender at the highest level in business offices in the country." That Ministry has a "Coordinating Group on Violence against Reproductive Freedom,' which, among its functions are actions to prevent violence against pregnant women in health care. It also pointed out that the Ministry of Health and the MMGyD created the "International Roundtable on Obstetric Violence," which put into operation a team to implement the law on a respectful and humanized birth. The MMgyD also developed, participatively, a federal, multi-agency, transversal and inter-sectional "National Plan of Action against Gender-based Violence," which includes specific actions for an integral approach to situations of obstetric violence. It also stated that the Ministry of Health promotes, on a regular basis, public policies to optimize professional training in obstetrical emergencies, the reorganization of obstetrical services and the quality of the prenatal checkups.

116. The State contended that the specialized body in the matter has, as a priority, the strengthening and training of the services and staff in charge of the health of the expectant parents and their children. In addition, it indicated that, after 2009, the Ministry of Health, the Province of Buenos Aires and other prioritized health regions concluded "Operative Plan for the Reduction of Infantile, Maternal and Adolescent Mortality" and in 2019 Argentina had the lowest rate of maternal mortality in the last 20 years (2.9 for each 10,000 births).

117. With respect to training in obstetric emergencies, in its evidence to facilitate adjudication requested by the Court, the State informed that, since 2011, it has developed training in a project on obstetrical emergencies that represents a national strategy to reduce maternal mortality produced by direct causes, such as post-partum hemorrhaging and hypertensive emergencies and that includes training of the guards at all the maternity clinics in the country with a thousand yearly births. It indicated that this strategy included clinical simulations that emphasized sensitivity and reflection on rights in emergency childbirth situations and included training the obstetric teams, through simulations, according to the protocols of treatment with a focus on rights and the administration of services. This training began in 2011 and continues to date, with the content and methods being constantly brought up to date.

118. The ***Court*** welcomes that the State has taken actions directed to the non-repetition of the events described in this judgment, but points out that, although the maternal mortality in Argentina was considerably reduced by 2019, it increased recently, going from 2.9 per each 10,000 births in 2021, which is less than one percent lower than the rate of maternal mortality in 1992 (4.8 for each 10,000 births), the year that Ms. Brítez Arce died. The Court considers that

this situation imposes the need to implement measures directed to reduce maternal mortality as a guarantee of non-repetition.

119. Therefore, the Court will order the State to design, within the period of one year, a campaign directed to publicize (i) the rights related to pregnancy, labor, and post-partum referred to in Article 2 of Law 25,929, known as "The Law for Humanized Birth"; (2) the situations that may be cases of "obstetric violence" in light of the contents of this judgment and Law 26,485 "The Law on the Comprehensive Protection to Prevent, Punish and Eradicate Violence against Women in the environments in which they develop their interpersonal relationships" and (3) the rights of pregnant women to receive humanized health care during pregnancy, childbirth and post-partum; to receive complete information in clear language on the state of their health; that their preferences, choices and needs be listened to, and that the pathologizing of pregnancy, childbirth and post-partum be avoided. This campaign is to be broadcast on radio and television and may also be reproduced in audio or video in all the maternity clinics in the country, compliance of which will be monitored by the Court in the city of Buenos Aires for a period of three years.

E. Compensation

E.1 Pecuniary and non-pecuniary damages

120. The ***Commission*** requested integral reparation for the human rights violations declared in the Merits Report, both pecuniary and non-pecuniary, and that the State adopt measures of financial compensation and satisfaction in favor of the family members of the victim. It pointed out that at the moment of the death of their mother, Ezequiel Martín Avaro and Vanina Verónica Avaro were children, which should be taken into account in determining the corresponding reparations.

121. The ***representative*** stated that the Court should set, with regard to the analysis of the case and to its consistent case law, the amount of financial compensation for the children of Ms. Brítez Arce. He indicated that Ezequiel Martín and Vanina Verónica jointly claimed, as compensation in a civil suit, the amount of USD 569,392.00 (five hundred sixty-nine thousand, three hundred ninety-two United States dollars). He also requested that the compensation that might be awarded include a modest and basic house since their lives of "lost chances" made it impossible, at their ages, to attain a life with dignity.

122. The ***State*** argued that the pleadings and motions brief does not contain specific claims in the area of compensation, which was the procedural moment to present them. It added that the representative has not adequately provided justification for the Court to set financial compensation for the victims in the case, which is relevant when assessing the proactive efforts that the State deployed in order to comply with the Commission's recommendations and that exceed the financial reparation. In addition, it underscored that the representative did not provide any evidence that could accredit the material items to repair, in particular regarding the "lost opportunities in their lives" alluded to in his brief, or with respect to the amounts that might be pertinent. The State, therefore, requested that, should the Court consider it pertinent to fix an eventual financial reparation, it do so under the principle of equity.

123. As to non-pecuniary damages, the State recalled that the reparations due to the victims do not necessarily have to be pecuniary since the judgment, per se, is a form of reparation. The State considers that its express acceptance of the terms of the Merits Report and its efforts to comply in good faith with the recommendations are also reparatory with regard to the victims and that such circumstances should be taken into account when an eventual reparation is fixed for non-pecuniary damages, which also should be determined in accordance with the principle of equity.

124. The ***Court*** has developed in its jurisprudence the concept of pecuniary damages and has established that it presupposes the loss of or detriment to the victims' income, the pertinent expenses incurred and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[129] The representative has not provided any evidence on the amounts that should be set for pecuniary damages. Nonetheless, the Court considers it necessary to compensate the loss of earnings that Ms. Brítez Arce would have received during her life and, thus, sets, in equity, the sum of USD 64,000.00 (sixty-four thousand United States dollars), as compensation for loss of her earnings, which is to be divided equally between her children, Ezequiel Martín and Vanina Verónica.

125. As to non-pecuniary damages, the Court finds that Ms. Brítez Arce should be compensated under this concept and orders, in equity, the payment of USD 60,000.00 (sixty thousand United States dollars). This amount is to be divided equally and paid to her children, Ezequiel Martín and Vanina Verónica. In addition, the Court recognized in its judgment the suffering of the children of Ms. Brítez Arce due to the events analyzed in this case. Therefore, considering the circumstances, the violations committed, the different degrees of suffering caused and undergone, and the time elapsed, the Court orders, in equity, the payment of the sum of USD 25,000.00 (twenty-five thousand United States dollars) as non-pecuniary damages for each of the children of Ms. Brítez Arce declared victims in this judgment.

F. Costs and expenses

126. The ***representative*** claimed that he and his wife, as uncle and aunt of Ezequiel Martín and Vanina Verónica, assumed all of the costs required by the proceedings of this case; among them, those referring to the expert medical opinions, lawyers, travel and lodging and paperwork and that they will not claim any of those expenses from their nephew and niece. Nonetheless, the representative did not indicate the value of those expenses nor did he provide vouchers for them. He pointed out that he had intervened in this case before the Commission and the Court since April 20, 2001; in other words, 21 years ago.

127. The ***State*** did not refer to this matter.

128. The ***Court*** reiterates that, in accordance with its case law, costs and expenses are part of the concept of reparation because the activities carried out by the victims in order to obtain justice, at both the national and the international levels, imply expenditures that must be compensated when the international responsibility of the State is declared in a judgment. Regarding the reimbursement of costs and expenses, the Court must prudently assess their scope, including the expenses incurred before the authorities of the domestic jurisdiction and those incurred during the proceedings before the inter-American system, considering the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.[130]

129. The Court has held that the claims of the victims or their representatives with regard to costs and expenses, and the supporting evidence, must be presented to the Court at the first procedural opportunity granted to them -in the motions and pleadings brief-, without prejudice to those claims being subsequently updated to include new costs and expenses incurred in the

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[129] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs, supra*, para. 43 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 132.

[130] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra,* paras. 42, 46 and 47 and *Case of Leguizamón Zaván et al. v. Paraguay, supra,* para. 142.

proceedings before the Court. The Court also reiterates that it is not sufficient to forward probative documents, rather the parties must include the arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justifications.[131]

130. The file of this case does not contain probative support for the costs and expenses incurred by the victims or their representatives. In view of the lack of vouchers of these expenses, the Court orders, in equity, the payment of USD 20,000.00 (twenty thousand United States dollars) for costs and expenses to René Federico Garrís. Although the representative did not substantiate specific disbursements by the family members of Ms. Benítez Arce related to the search for justice, the Court may reasonably assume that such expenses did exist. Therefore, the Court considers it appropriate to set, in equity, the sum of USD 15,000.00 (fifteen thousand United States dollars), to be paid to each of the children of Ms. Brítez Arce.

G. Method of compliance of the payments ordered

131. The State must make the payment of compensation for rehabilitation, pecuniary and non-pecuniary damages and the reimbursement of costs and expenses ordered in this judgment directly to Ezequiel Martín Avaro, Vanina Verónica Avaro and René Federico Garrís, within one year of notification of this judgment.

132. If the beneficiaries die before they receive the respective amount, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

133. The State must comply with the monetary obligations by payment in United States dollars or, if that is not possible, in its equivalent in the currency of Argentina, using the highest and most beneficial rate of exchange for the beneficiaries allowed by domestic law at the moment of payment. The Court, during the stage of monitoring compliance with the judgment, may prudently adjust the equivalent of these numbers in the currency of Argentina in order to avoid variances in the exchange rate that substantially affect the buying power of those amounts.

134. If, for causes that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established within the indicated time frame, the State must deposit said amounts in their favor in a bank account or a certificate of deposit in a solvent Argentine financial institution, in United States dollars, and in the most favorable conditions permitted by banking laws and practice. If the corresponding amount is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

135. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damages shall be delivered in full to the person indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

136. If the State should fall in arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Argentina.

IX
OPERATING PARAGRAPHS

137. Therefore,

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[131] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 277 and *Case of Deras García et al. v. Honduras. Merits, Reparations and Costs.* Judgment of August 25, 2022. Series C No. 462, para. 132.

THE COURT

DECIDES,

unanimously, to

1. Accept the recognition of responsibility made by the State, pursuant to paragraphs 15 to 30 of this judgment, and

DECLARES,

unanimously, that:

2. The State is responsible for violating the rights to life and personal integrity established in Articles 4(1) and 5(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Cristina Brítez Arce, pursuant to paragraphs 57 to 85 of this judgment.

By four votes in favor and two against, that:

3. The State is responsible for violating the right to health established in Article 26 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Cristina Brítez Arce, pursuant to paragraphs 57 to 85 of this judgment.

Dissenting: Judges Humberto Sierra Porto and Patricia Pérez Goldberg.

unanimously, that:

4. The State is responsible for violating the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, read in conjunction with Article 1(1) thereof, and Article 7 of the Convention of Belém do Pará, to the detriment of Ezequiel Martín Avaro and Vanina Verónica Avaro, pursuant to paragraph 23 of this judgment.

unanimously, that:

5. The State is responsible for violating the right to personal integrity, the right to protection of the family and the rights of the child established in Articles 5(1), 17(1) and 19 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Ezequiel Martín Avaro and Vanina Verónica Avaro, pursuant to paragraphs 90 to 97 of this judgment.

AND ESTABLISHES,

unanimously, that:

6. This judgment is, per se, a form of reparation.

7. The State shall issue the publications ordered in paragraphs 108 and 109 of this judgment.

8. The State shall design a publicity campaign on the rights related to pregnancy, labor and post-partum and on the situations that may be cases of "obstetric violence," as established in paragraph 119 of this judgment.

9. The State shall pay the amounts set forth in paragraphs 104, 124, 125 and 130 of this judgment as expenses for psychological and/or psychiatric care; as compensation for pecuniary and non-pecuniary damages and for reimbursement of costs and expenses, pursuant to paragraphs 131 to 136 of this judgment.

10. The State shall, within one year of notification of this judgment, present the Court with a report on the measures adopted to comply therewith, notwithstanding the provisions of paragraph 109 of this judgment.

11. The Court will monitor full compliance with this judgment, in exercise of its attributions and in compliance with its duties pursuant to the American Convention on Human Rights and will declare this case closed once the State has fully complied with all the measures ordered therein.

Judges Humberto Antonio Sierra Porto and Patricia Pérez Goldberg presented their individual dissenting opinions.

Done in the Spanish language at San José, Costa Rica on November 16, 2022.

I/A Court HR. *Case of Brítez Arce et al. v. Argentina*. Merits, Reparations and Costs. Judgment of November 16, 2022.

Ricardo C. Pérez Manrique
President

Eduardo Ferrer Mac-Gregor Poisot

Humberto Antonio Sierra Porto

Nancy Hernández López

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar

PARTIALLY DISSENTING OPINION OF
JUDGE HUMBERTO ANTONIO SIERRA PORTO

CASE OF BRÍTEZ ARCE ET AL. V. ARGENTINA

JUDGMENT OF NOVEMBER 16, 2022

(Merits, Reparations and Costs)

1. With the customary respect for the majority decisions of the Inter-American Court of Human Rights (hereinafter "the Court"), this opinion has the purpose of explaining my disagreement with Operating Paragraph 7, which declares the international responsibility of the State of Argentina for violating the right to health of Cristina Brítez Arce.

2. Allow me to repeat the position expressed on prior occasions that there are logical and juridical inconsistencies in the jurisprudential position of the Court's majority on the direct and autonomous justiciability of the economic, social, cultural and environmental rights (hereinafter "the ESCER"), by means of Article 26 of the American Convention on Human Rights (hereinafter "the "Convention").[1] This position ignores the rules of interpretation of the Vienna Convention on the Law of Treaties,[2] changes the nature of the obligation of progressivity,[3] ignores the will of the States embodied in the Protocol of San Salvador[4] and undermines the Court's legitimacy,[5] to mention only some arguments.

3. Moreover, with respect to the peculiarities of this case, allow me to repeat my position on the scope of the principles of interdependence and indivisibility in relation to the interpretation of Article 26 of the Convention. These principles state that all rights have an equal hierarchy and importance and that the enjoyment of any of the rights depends on the realization of the other rights. This does not imply, however, that the ESCER should automatically be incorporated as autonomous and justiciable rights into the content of the Convention. Although it is true that the rights are intrinsically connected and that the respect and enjoyment of certain rights and freedoms cannot justify the denial of others, that argument is not sufficient to modify the competence of a court. In fact, the principles of indivisibility and interdependence and the notion that "equal attention and urgent attention should be given to the implementation, promotion

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[1] This opinion complements the position already expressed in my partially dissenting opinions in *Lagos del Campo v. Peru, Dismissed Employees of Petroperú et al. v. Peru, San Miguel Sosa et al. v. Venezuela, Muelle Flores v. Peru, Hernández v. Argentina, ANCEJUB-SUNAT v. Peru, Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Employees of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, Casa Nina v. Peru, Guachalá Chimbo v. Ecuador, FEMAPOR v. Peru*, *Guevara Díaz v. Costa Rica* and *Mina Cuero v. Ecuador*; as well in my concurring opinions in *Gonzales Lluy et al. v. Ecuador, Poblete Vilches et al. v. Chile, Cuscul Pivaral et al. v. Guatemala, Buzos Miskitos v. Honduras, Vera Rojas et al. v. Chile, Manuela et al. v. El Salvador, Former Employees of the Judiciary v. Guatemala, Palacio Urrutia v. Ecuador* and *Pavez Pavez v. Chile*, concerning the justiciability of economic, social, cultural and environmental rights by means of Article 26 of the Convention.

[2] *Cf. Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[3] *Cf. Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359. Concurring opinion of Judge Humberto Antonio Sierra Porto.

[4] *Cf. Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra Porto.

[5] *Cf. Dismissed Workers of Petroperú et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2017. Series C No. 344. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

and protection of both civil and political, and economic, social and cultural rights,"[6] are consistent with an analysis of the ESCER from the perspective of connectivity, since their implementation does not imply an unlimited expansion of the Court's competence, but it does allow a broad understanding of the rights protected by the Convention, which implies the respect and the guarantee of all human rights, including economic, social, cultural and environmental rights.[7]

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Registrar

[6] *Cf.* UN General Assembly. *Alternative approaches and ways and means within the United Nations System for improving the effective enjoyment of human rights.* Resolution 32/130 of December 16, 1977.

[7] *Cf. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra Porto and *Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil.* Preliminary Objections, Merits, Reparations and Costs. Judgment of July 15, 2020. Series C No. 407. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

PARTIALLY DISSENTING OPINION OF

JUDGE PATRICIA PEREZ GOLDBERG

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF BRÍTEZ ARCE *V.* ARGENTINA

JUDGMENT OF NOVEMBER 16, 2022

(Merits, Reparations and Costs)

With full respect for the majority opinion of the Inter-American Court of Human Rights (hereinafter "the Court"), I issue this opinion[1] with the purpose of explaining why it is not proper to establish a State's international responsibility for an alleged infringement of the individual right to health on the basis of Article 26 of the American Convention on Human Rights (hereinafter "the Convention").

In the following paragraphs, I indicate the reasons why the Court is not competent to declare such a violation.

1. In the first place, it is necessary to point out that the Commission found that the facts of this case demonstrated the international responsibility for violating the rights to life, to personal integrity and to health to the detriment of Ms. Brítez Arce and for infringing the rights to judicial guarantees and to judicial protection with respect to her children. The representative considered those same rights to be infringed and the State, in its answering brief, accepted its international responsibility for those violations.

2. The judgment states that an analysis will be conducted on the alleged violation of the right to health "simultaneously" with that on the rights to life and to personal integrity of Ms. Brítez Arce. The principal idea on which this decision rests has as its basis that "the rights to life and to personal integrity are directly and immediately linked to human health care and that the lack of adequate health care may imply a violation of Articles 4(1) and 5(1) of the Convention."[2]

3. Once again and as I expressed in my opinions in *Guevara Díaz v. Costa Rica* and *Mina Cuero v. Ecuador,* I confirm my position on the Court's lack of jurisdiction to declare the autonomous violation of economic, social, cultural and environmental rights (hereinafter "the ESCER").

4. I will not repeat here the many logical, juridical and practical difficulties raised by the theory of the direct justiciability of the ESCER that, with its acceptance by the Court's majority beginning with *Lagos del Campo v. Peru*, has created a group of new problems that do nothing but affect the reasonable predictability and the legal security that the Court must ensure.

5. To proceed thus evades the requirement that all international obligations must emanate from the prior and express consent of the States; it omits making explicit that those States have not granted jurisdiction to the Court to rule on

[1] Article 65(2) of the Rules of Procedure of the Court establishes that: "Any judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the Presidency so that the other judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment."
[2] *Cf*. Para. 59.

the ESCER, as stated both in the Convention and its Additional Protocol;[3] it purports to artificially broaden the jurisdiction of the Court, and it does not follow the Convention's rules on its interpretation. Consequently, its content is being altered in practice beyond the limits of the rules governing its modification or amending;[4] in other words, it is making a jurisprudential mutation of the text.[5]

6. The primary reason given to affirm the direct justiciability of the right to health is an argument of authority in that it cites the judgment in *Lagos del Campo v. Peru,* which establishes that both civil and political rights and economic, social, cultural and environmental rights must be categories understood integrally and universally "without any hierarchy, and enforceable in every case before the competent authorities." This is a logical leap since it is one thing that the rights in both categories lack a hierarchy among them -a correct affirmation that I share- and it is another thing that they are enforceable in the same way before this Court.

7. As I have previously pointed out, to affirm the lack of the direct justiciability of the ESCER before the Court does not imply ignoring their existence, their enormous importance, their interdependent and indivisible nature with respect to political and civil rights or that they lack protection or that they should not be protected. It is the duty of the States to allow the growing autonomy of individuals, which means that they are able to count on access to primary goods (more ample than those defined within the scope of the political philosophy of John Rawls),[6] which enables their capabilities to develop; in other words, access to economic social, cultural and environmental rights.[7]

8. Another reason that is advanced in favor of the Court's jurisdiction is that Article 26 of the Convention is a framework article that includes distinct rights and that it remits to the Charter of the Organization of American States (hereinafter "the OAS Charter"). It is contended that because of certain norms, the inclusion of the right to health is derived from the Charter. In the first place, that instrument does not confer jurisdiction on the Court. Secondly, a reading of the norms from which is derived this supposed right shows that they are aspirational provisions that do not define rights or their correlative duties.

9. It is not possible to interpret Articles 34(i), 34(l) and 45(h) cited in the judgment[8] without taking into account the norm that heads the chapter on "Integral Development," which is Article 30 of the OAS Charter. This precept states that "[t]he Member States, inspired by the principles of inter-American solidarity and cooperation, **pledge themselves to a united effort to ensure**[9] international social justice in their relations and integral development for their peoples, as conditions essential to peace and security. Integral development encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for

[3] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).
[4] See Articles 76(1) and 77(1) of the Convention.
[5] This, of course, does not mean that the Court cannot evolutively interpret the norms of the Convention, specifying the scope of the terms employed therein according to the context in which the facts will be subsumed into the norm, as has occurred, for example, in the case of sexual orientation as a protected category, of indigenous communal property and of the concept of victim in the inter-American system of human rights.
[6] RAWLS defines primary goods as a group of goods necessary to draw up and implement a rational life plan, such as freedom, opportunities, income, wealth and self-respect, "A Theory of Justice" (1995:393).
[7] PÉREZ GOLDBERG, "Las mujeres privadas de libertad y el enfoque de capacidades" (2021:94-109).
[8] *Cf*. Para. 58.
[9] Emphasis added.

accomplishing it should be achieved."

10. Article 34 indicates that '[t]he Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic **objectives** of integral development. To achieve them, they likewise **agree to devote their utmost efforts** to accomplishing the following basic goals: […] i) Protection of **man's potential** through the extension and application of modern medical science; […] l) Urban conditions that offer the opportunity for a **healthful**, productive, and full life."

11. In turn, Article 45 states that "[t]he Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, **agree to dedicate every effort** to the application of the following **principles and mechanisms**: […] h) **Development** of an efficient **social security** policy**.**" [10]

12. In sum, the OAS Charter does not recognize the right to health, much less define its content. Therefore, and as I have stated on other occasions, to conceive Article 26 of the Convention as a norm of remission for all of the ESCER that are included in the OAS Charter disregards the commitment adopted by the States Parties and opens a path of uncertainty with respect to the catalogue of justiciable rights before the Court, affecting the legitimacy of its actions.

13. The majority claims that the Court has recognized in various cases the right to health as a right protected through Article 26, which is certainly not a reason in favor of its application – and that with respect to the consolidation of this right there exists "a broad regional consensus since it has been explicitly recognized in various constitutions and domestic laws in the region."[11]

14. We should stop and think about this argument, because it would appear that it purports to equate the Convention with the constitutions of the States Parties, as if one and the others were equal pieces of that so-called "regional consensus." This is erroneous, both with respect to the nature of both types of instruments, as well as with respect to their scope, because the Convention is an international treaty, signed by the respective States while the constitution of each country is an agreement reached by the citizenry after domestic democratic deliberative processes. Its scope is also different; while the Convention is called to rule on the international adjudicatory plane, the respective constitutions have a domestic scope, circumscribed to each State.

15. Moreover, that reasoning implicitly converts the constitutions of the States Parties into a source of conventional law. This is an erroneous interpretation of Article 29(b) of the Convention. That precept is meant for cases in which a right, recognized in the Convention, is regulated more broadly by the legislation of a State Party. In that assumption, what must be applied -by virtue of the principle *pro persona*- is the most favorable norm in the specific case. The purpose of this provision is, of course, not to broaden the catalogue of conventional rights, as understood by this supposed homologation of the Convention and the national constitutions framed in the idea of a "regional consensus."

16. It is necessary, therefore, to distinguish the two planes -related- but distinct.

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[10] Emphasis added.
[11] *Cf*. Para. 58.

One is the national plane, where by a democratic process, the citizenry decides to give expression to the ESCER in its respective juridical order, incorporating also the international law on this matter, as occurs in the vast majority of the Member States of the inter-American system of human rights. In this context, it is the national courts that -within the scope of their competences- exercise their authority with respect to the interpretation and the justiciability of the ESCER, in accordance with their constitutions and laws.

17. Another plane, distinct -although complementary- is the international. As an international court, the role of the Inter-American Court on this plane is to decide whether a State, whose responsibility has been claimed, has violated one or more of the rights established in the Convention. In light of the normative design of and in accordance with Article 26, the Court is authorized to declare the State's international responsibility if it has not complied with the obligations of progressive development and non-regression, but not of the ESCER considered individually.

18. This affirmation is in line with what was expressed in previous opinions,[12] since the proper doctrine that the Court should follow is precisely to consider the economic, social, cultural and environmental dimensions of the rights recognized in the conventional norms and to exercise its adjudicative jurisdiction by means of connectivity. With respect to the right to health, that was the manner that the Court employed in fourteen cases prior to the judgment in *Poblete Vilches v. Chile* (2018), the first case in which the Court declared the autonomous violation of the right to health on the basis of Article 26 of the Convention. The adjudication of the responsibility through connectivity was the path followed in cases such as *Villagrán Morales et al. (Street Children) v. Guatemala* (2004), *"Juvenile Reeducation Institute" v. Paraguay* (2004), *Yakye Axa Community v. Paraguay* (2005), *Ximenes Lopes v. Brazil* (2006), *Artavia Murillo et al. v. Costa Rica* (2012) and *I.V. v. Bolivia* (2016. Needless to say, the declaration of responsibility on the basis of connectivity in no way empowers the Court to declare the violation of rights not recognized in the text of the Convention. That procedure simply allows establishing the necessary relationship between ESCER and civil and political rights recognized in the Convention.

19. Finally, the judgment proposes that it is possible to distinguish two dimensions of the right to health. First, a general obligation to protect health related to the obligation to ensure quality medical care[13] and, second, an obligation related to the individual right to health.[14] In line with the previous paragraph, it is possible and desirable that the right to health in its individual aspect be analyzed in connection with the rights to life or to personal integrity (linking Articles 4 or 5 with Article 26 of the Convention) and their general and progressive aspects in the light of Article 26, read in conjunction with Article 1(1) of the Convention. This would allow the Court to determine when deficient sanitary care has produced a harm to the life or to the personal integrity of an individual (as precisely happened in this case) and when the benefit offered by the State or, in other terms, the implemented public health policy does not attain the level of its commitment to progressivity and to non-regression in the terms of Article 26.

20. In fact, it was thought necessary to make a statement in the judgment on the State's obligations "in providing health services during pregnancy, childbirth and post-partum and its relationship to the guarantee of the rights to life and

[12] See para. 3 of this opinion.
[13] *Cf*. Para. 61.
[14] *Cf*. Para. 60.

to personal integrity."[15] Since the acts of the health staff constituted obstetric violence against Ms. Brítez Arce and affected her personal integrity and, ultimately, her life, it was perfectly possible to maintain the doctrine established in *I.V. v. Bolivia.* In that case, the Court held that the medical acts -which concluded with the forced sterilization of Ms. I.V.- had violated her right to personal integrity. In the present case, the infringement of the rights to personal integrity and to life of Ms. Brítez Arce were necessarily declared. For its part, in view of the recognition of international responsibility by the State, what must be analyzed is the provision of the State's health care services in the framework of Article 26 of the Convention, assessing whether Argentina had complied with its obligations of progressivity and non-regression in the light of that norm.

21. In sum, this manner to proceed affects both the legal security that an international court must ensure and the legitimacy of its judgments because the reasoning provided simply ignores a norm that expressly limits the Court's jurisdiction to hear eventual infringements of the ESCER.

22. The proper basis of a judicial decision is that its arguments allow the reader to follow it and to understand the reasoning employed by a court to arrive at its final decision. The determination to uphold the justiciability of the ESCER cannot be built upon the basis of ignoring the norms of jurisdiction that the Convention and its Optional Protocol establish. In this case, Argentina recognized its responsibility, which included a violation of Article 26, because it understood that the conduct of its agents did not attain the level of compliance of its obligations under the Convention. That does not mean, however, that the Court has jurisdiction to declare a violation of the right to health, as has been explained.

23. It must be remembered that Article 19 of the Protocol of San Salvador defines two types of protective mechanisms. A general one that is applicable to all the rights recognized therein, which consists in the investigations, observations and recommendations that the different bodies of the inter-American system may formulate in the reports that the States must present on the progressive development of the ESCER, and the other intended solely for the right to organize and join trade unions and the right to education and that enables their eventual violations to be heard by the Court.

24. Unfortunately, and as Medina and David have pointed out, the position of the majority undermines the effectiveness not only of the Protocol of San Salvador but also of Article 26,[16] a conventional provision that has a specific content that the Court can and should develop in the cases that it is called upon to hear.

25. A reading of Article 26 indicates that, other than what is contained on the civil and political rights specified and developed in Chapter II of the Convention, it establishes the obligation of the States Parties to adopt the "measures," that is, the actions, measures or public policies necessary to achieve "progressively" the full effectiveness of the rights derived from the norms of the OAS Charter "in accordance with their resources" (which is congruent with the progressive nature of the obligation) and by "legislation or other appropriate means." In other words, each State Party has the obligation to formulate definitions and to make marked progress in these matters, in accordance with their domestic deliberative processes.

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[15] *Cf*. Para. 56.

[16] MEDINA and DAVID, "The American Convention on Human Rights" (2022:28).

26. The above must not lead to a confusion of the reparatory norms of, on the one hand, the national courts and, on the other, an international court such as the Inter-American Court of Human Rights. There is no norm of the Convention and its Protocol that authorizes it to declare an autonomous violation of the right to health in its individual dimension.

27. In short, international tribunals should exercise their jurisdiction within the framework set out in the pertinent treaties. Those juridical instruments constitute their basis and also the limit of their actions. From a democratic perspective, what has been expressed is coherent with due respect for the domestic deliberative processes for the ratification of a treaty and for the type of interpretation that international tribunals develop. This hermeneutic work is exercised by respecting the standards of international, and not constitutional, law.

Patricia Pérez Goldberg
Judge

Pablo Saavedra Alessandri
Registrar