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CASE 12.855
MERITS (PUBLICATION)

ANALÍA VERÓNICA TAPIA AND FAMILY
ARGENTINA

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I. INTRODUCTION¹

1. On February 1, 2005, the Inter-American Commission on Human Rights (hereinafter the “Commission,” “Inter-American Commission,” or “IACHR”) received a petition lodged by Mr. Florencio Isidoro Tapia (hereinafter the “petitioner”), which claimed that the Republic of Argentina (hereinafter the “Argentine State,” the “State,” or “Argentina”) bore international responsibility for the denial and delay of justice for the violent delivery that Analía Verónica Tapia (hereinafter “Analía”) suffered at her birth and the mental impairment that allegedly resulted therefrom, to the detriment of Analía and her parents, Florencio Isidoro Tapia and María Ángela Amerise.

2. On March 19, 2012, the Commission adopted Report on Admissibility No. 6/12.² On April 18, 2012, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement.³ The parties were afforded the regulation time limits to present additional observations as to merits. All information received was duly relayed between the parties.

II. SUBMISSIONS OF THE PARTIES

A. The Petitioner

3. The petitioner said that on the night of July 6, 1979, Mrs. María Ángela Amerise and her husband, Florencio Isidoro Tapia, went to Rosendo García Hospital (*Sanatorio Rosendo García*) in Rosario, which belongs to the Metallurgical Workers Union (*Unión Obrera Metalúrgica*) (hereinafter “UOM”). According to the petitioner, Mrs. Amerise was admitted to the “predelivery” room where, in spite of the fact that the obstetrician’s report said that she was nearly 10 centimeters dilated and her cervix almost fully effaced, she was “most dangerously” given oxytocin, which “causes immediate expulsive contractions.” The petitioner alleged that no one monitored the dose or the way in which the drug was administered.

4. The petitioner said that given the imminence of the birth, Mr. Florencio Isidoro Tapia left the predelivery room to look for someone and came upon nurse Raquel Gladys Boillos, who helped Mrs. Amerise into a wheelchair, asked her to hold the receptacle containing the oxytocin in her hand, and wheeled her toward the delivery room at high speed. He added that on the way to the delivery room “the baby was expelled ... violently” in what is known as a “precipitous delivery,” which caused the newly born Analía Verónica Tapia to strike her head on the wheelchair’s foot rest and fall. He said that the blows sustained by the girl during birth, coupled with the tear on her umbilical cord near the abdomen that caused a hemorrhage, lack of oxygen, and additional injuries that she suffered when the wheelchair ran over her, caused trauma to the left frontal part of her skull.

5. The petitioner said that some minutes later a doctor and the midwife arrived, and that the former took the newborn and her mother to the delivery room. The petitioner alleged that the child was injected with Konakion (vitamin K) to prevent internal brain hemorrhage and had cold water compresses applied to her. The petitioner said that when the girl was brought so that she could be with her mother, her head was deformed by the hematoma caused by the trauma she suffered while being born.

6. He alleged that as a result, Analía suffers from severe cerebral atrophy that prevents her from leading a proper life, as is reflected by the fact that at almost 26 years of age she has the intellectual age of a four-year-old. He added that in her clinical history it was fraudulently recorded that she had “presumptive Down’s syndrome”

¹ In accordance with Article 17.2 of the Commission’s Rules of Procedure, Commissioner Andrea Pochak, an Argentine national, did not participate in the discussion or decision on this case.

² CIDH, Report on Admissibility No. 6/12 of March 19, 2012, Analía Verónica Tapia and Family, Petition P-93-05, Argentina.

³ The parties held meetings aimed at reaching a possible friendly settlement of the matter; however, they failed to bear fruit.

7. The petitioner said that he instituted a criminal proceeding in relation to the events but that the criminal judge only opened an investigation against nurse Raquel Gladys Boillos for the crime of negligent injury, leaving aside the other medical staff. He said that the judge did not investigate the doctors because of an agreement with the UOM, and that the medical examiner, who "issued a report on the girl without seeing her," was also involved in it. He said that the case was ruled without merit in 1982 and dismissed in 1983.

8. The petitioner said that in the course of the criminal proceeding the case file disappeared, and with it, radiology studies showing the trauma that Analía had suffered. As a result, four years were lost attempting to reconstruct the case file. The petitioner added that the judge, "in concert with his lawyers," persuaded him not to request more evidence because "his statements were truthful and in that way it would take less time to reach a ruling that would certainly be favorable to him."

9. The petitioner said that in 1980 he filed a civil suit against Rosendo García Hospital and the UOM Social Services Agency [*Obra Social*]. He said that the record and the evidence it contained also vanished and that the proceeding recommenced in 1987 after various formalities to reconstruct it.

10. According to the petitioner, the judgment at first instance in the civil matter, returned on June 12, 1999, rejected the suit "for insufficient evidence." The petitioner said that he appealed and that in a judgment dated July 7, 1993, the ruling at first instance was vacated on the grounds that Analía had not been assisted by a public defender for minors and that evidence requested by the plaintiff had not been collected. The petitioner added that as a result of the vacation of the judgment, the proceeding was set back to the evidentiary stage, that the record again went missing, and that reconstruction was difficult because all that was available were some briefs that the petitioner had kept.

11. He said that in spite of the fact that the judge requested Rosario Medical School (*Facultad de Medicina de Rosario*) for an expert medical opinion, the medical school failed to comply, so the judge decided "to do without said expert entity." He said that, as a result, the examination had to be done by Montevideo Medical School (*Facultad de Medicina de Montevideo*) in Uruguay.

12. The petitioner said that he filed a "*per saltum*" application, which was denied as it only applies to domestic courts. Finally, the petitioner said that in 2004 he stopped trying to move the proceedings forward since he considered that he had exhausted the measures for obtaining a decision within a reasonable time.

13. The petitioner said that on November 24, 2006, the Civil and Commercial District Court published an edict in La Capital newspaper ordering the destruction of documentation corresponding to proceedings instituted prior to 1996; therefore, three days later, he filed a brief to prevent the existing evidence from being destroyed.

B. The State

14. With respect to the criminal proceeding, the State of Argentina said that in 1983 the case was dismissed in favor of a nurse and that the proceedings in relation to another nurse were set aside.

15. As to the civil proceeding for damages against the Rosendo García private hospital, the State mentioned that the petitioner obtained an unfavorable judgment at first instance on the basis of insufficient evidence. The State said that the Court of Appeals (*Cámara de Apelaciones*) vacated that judgment because the intervention of the Office of the Attorney General for Minors (*Ministerio Público de Menores*) was omitted, so the case was set back to the evidentiary stage at first instance where several delays occurred due to the fact that the plaintiff requested the examination of evidence. The State added that both the plaintiff and the defendant invoked remedies to challenge the constitutionality of the court's decision on costs.

16. The State said that a lawyer representing the Tapia family alleged that the doctor treating Analía Verónica Tapia recommended to them in writing "not to mention the genetic test (or to mention it as little as possible) and to seek by every means possible to ascribe the defect in the x-ray to the blow." The State argued that, for that reason, the petitioner avoided producing medical evidence tending to uncover the truth.

17. The State said that following a meeting held on October 27, 2010, during the 140th session of the IACHR, a meeting was held with the petitioner in the Province of Santa Fe at which the offer was made of medical support and social assistance, as well as advisory services and information on "mechanisms and institutions intended for cases involving disciplinary violations by lawyers and misconduct by judges." It added that the petitioner was seeking economic reparation and turned down the offer of humanitarian assistance.

18. The State said that the civil proceeding was operative in nature, which meant that procedural impetus on the part of the plaintiff was indispensable for the resolution of the case. In that connection, it said it was found that there were long periods of inactivity in the civil proceeding: from November 1982 to April 1987; from July 1993 to July 1994; and from June 14, 2004 to May 31, 2008. It added that expiration applies after one year at first instance, and after six months at the appeal stage; however, that was not verified as there has been no motion from the defendant. The State also said that the petitioner had changed lawyers on multiple occasions, which had also held up the process.

19. The Argentine State argued that it bears no international responsibility for violation of Article 5 of the American Convention to the detriment of Analía Verónica Tapia, since it had not been shown that her pathology originated from the medical care she received at the time of the delivery. It added that said assertion should have been accredited in the civil proceeding, which the petitioner abandoned. The State said that the Commission could not decide whether or not medical malpractice existed at the time of the delivery since such a decision was the exclusive purview of the local courts.

20. The State held that Argentina did not violate the rights to a fair trial and judicial protection since the appellate court in the civil suit for damages nullified the proceedings upon finding that the Office of the Attorney General for Minors had not intervened on behalf of Analía Verónica Tapia, which corrected the procedural flaws at first instance.

III. FINDINGS OF FACT

A. The birth of Analía Verónica Tapia and her medical condition

21. With respect to the birth of Analía Tapia, the Commission finds that at 8:00 p.m. on July 6, 1979, Mr. Florencio Isidoro Tapia and Mrs. María Ángela Amerise went to the Rosendo García Hospital in Rosario, Argentina, which belonged to the UOM, so that Mrs. Amerise could give birth.⁴ She was admitted and the clinical history was opened in which it was recorded that she was 37 and a half weeks pregnant, 6 centimeters dilated, and her cervix 100 percent effaced.⁵ The clinical history records that at 10:30 p.m. Mrs. Amerise was 7 centimeters dilated, her cervix 110 percent effaced, and it was ordered that she be administered oxytocin, *a medication used to correct or normalize abnormal uterine dynamics, regardless of the existing dilation*,⁶ at a rate of 12 drops.⁷ The obstetrician, Ana María Casullo, ordered that she be placed on a drip "in order to induce birth."⁸ A short time thereafter, Mrs. Amerise felt that her labor was accelerating and for that reason they put her in a wheelchair and began wheeling her to the delivery room.⁹

22. The record contains the testimony of nurse Boillos, who stated in the criminal inquiry that "a precipitous birth occurred while the mother was being moved to be attended in the appropriate room; nurse Boillos 's received the child and categorically denies that the girl fell to the floor."¹⁰ However, the criminal inquiry also recorded the testimony of Mrs. Ofelia Ángela Contreras de Cuello, who was interned at Rosendo García Hospital on the day of the events and said "during the night I heard a loud noise, which made me start and I thought that my baby had fallen to floor; upon seeing that she had not, I went out into the corridor to see

⁴ Annex 1, Report on evolution of the delivery dated July 6, 1979. Enclosed with the initial petition.

⁵ Annex 1, Report on evolution of the delivery dated July 6, 1979. Enclosed with the initial petition.

⁶ Annex 2, Expert opinion rendered by Rosario Medical School dated October 23, 1995. Enclosed with the initial petition.

⁷ Annex 1, Report on evolution of the delivery dated July 6, 1979. Enclosed with the initial petition.

⁸ Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

⁹ Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

¹⁰ Annex 4, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

what was happening and heard a woman screaming ... and I saw a baby lying on the floor in the corridor.”¹¹ The neonatologist, Dr. Rubén Horacio Báscolo, who signed Mrs. Amerise’s clinical history, wrote in it “Down’s syndrome presumed.”¹²

23. According to the computerized axial tomography scan performed on Analía on January 22, 1990, she presented “cranial cephalic asymmetry; moderate central atrophy predominantly of the left side and discrete cortical atrophy of the basal, peri-opercular and connecting regions;”¹³ the medical certificate issued on March 4, 2013, by the Rosario Cardiovascular Institute (*Instituto Cardiovascular de Rosario*) at the request of Florencio Tapia found the same.¹⁴

24. On December 17, 1990, the Forensic Medicine Institute (*Instituto Médico Legal Forense*) responded to questions put by the Eighth Court. That expert opinion concluded that “this medical board finds that the presence of a cerebral hemiatrophy of the left side offers the following diagnostic disquisitions (a) the consequence of a previous physical trauma, (b) of an “ex vacuo” hemorrhage resulting from the precipitous delivery, (c) a congenital malformation.”¹⁵

25. On December 12, 1991, Drs. Alfredo D. Melchor and Lorenzo Gardella prepared an extraprocedural medical report at the request of Mr. Tapia, in which they said:

Although the physician who examined the girl indicated “presumptive Down’s syndrome” in the clinical history, there is nothing in the item analyzed (clinical history) to suggest that the necessary chromosome mapping was done.”

[...]

such atrophies are not absolutely consistent with a possible or potential Down’s syndrome, and in fact, even when such a syndrome exists, it can never cause atrophies of this type.”

[...]

the atrophies found originate exclusively from a heavy blow or trauma that occurred at the time of the child’s birth ... such blows to the skull affect intellectual and psychomotor capacity, causing a degree of disability that we estimate at 70 percent of her overall ability, both for the purposes of work and in terms of social relationships. That ability has been demonstrated by her scholastic backwardness and will certainly affect her relationships with others, with little likelihood of meeting a life partner and forming a household of her own.¹⁶

26. In an official letter dated October 23, 1995, the Senior Professor of Obstetrics at Rosario Medical School replied to 4 of the 32 questions formulated by the court. He said that “oxytocin is administered by intravenous drip to normalize abnormal uterine dynamics, regardless of the existing dilation” and “when inducing delivery by means of oxytocin infusion, the mother that must be properly monitored in order to ensure physiological uterine dynamics (contractions).”¹⁷

27. According to the expert opinion of medical doctors at the Forensic Medicine Institute, Analía Verónica was born in a “kind of precipitous delivery.” They said that they were unable to say if there were any difficulties in the labor because they did “not have the clinical history; that they were unable to determine if the baby was born with a congenital condition because chromosome mapping was not done; that it was not possible to determine whether or not Rosendo García Hospital adhered to the rules of the art of healing.”¹⁸

¹¹ Annex 4, Statement of Ofelia Ángela Contreras de Cuello dated November 4, 1980. Enclosed with the initial petition.

¹² Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

¹³ Annex 5, TAC No. 67768 dated January 22, 1990. Enclosed with the petitioner’s communication of January 26, 2011.

¹⁴ Annex X, Medical certificate dated March 4, 2013. Enclosed with the initial petition.

¹⁵ Annex 7, Opinion of the Forensic Medical Corps dated December 17, 1990. Enclosed with the petitioner’s communication of March 16, 2011.

¹⁶ Annex 8, Medical report dated December 12, 1991. Enclosed with the petitioner’s communication of January 26, 2011.

¹⁷ Annex 9, Expert opinion of Rosario Medical School dated October 23, 1995. Enclosed with the initial petition.

¹⁸ Annex 10, Judgment No. 187 of the Eighth Civil and Commercial District Court of First Instance in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

28. According to the expert medical opinion prepared in Montevideo, Uruguay, Analía, at the age of 22 years old, could only count up to four, was only able to draw three rectangles intersected by straight lines, answered in monosyllables (explosively and was unable to engage in dialogue), was not able to protect herself or her things, had no friends of either gender, complained of fears, and woke up frightened, saying she dreamt about monsters.¹⁹

B. Domestic proceedings

1. The criminal proceeding

29. On August 6, 1980, Mrs. María Ángela Amerise filed a complaint in connection with the events surrounding the birth of her daughter with the Office of the Clerk of the Third Correctional Court in and for Rosario, as a result of which an investigation was opened against nurse Raquel Gladys Boillos for negligent injury.²⁰

30. In that proceeding, a preliminary inquiry statement was taken from nurse Boillos, as were advance appearance statements²¹ from her colleague Norma Beatriz Deglovanetti and from Drs. Miguel Antonio Mendicino, Rubén Horacio Báscolo, and Ana María Casullo.²² According to the ruling of lack of merit, the statements all agreed that a precipitous delivery occurred as Mrs. Amerise was being taken in a wheelchair to the delivery room. However, they say that she was received by nurse Boillos and deny that the girl fell to the floor, for which reason "her illness was not the result of a trauma or blow sustained in those circumstances."²³

31. At the same time, the testimony was received of Mrs. Ofelia Ángela Contreras de Cuello,²⁴ who was a patient at the hospital on the day of the events and whose statement is consistent with the petitioner's account, as described in the preceding section.

32. In the course of the criminal proceeding, a medical examiner's opinion was requested, which found that "(1) the birth occurred in a surgical environment; apparently without traumatic injuries, the fetus presenting a congenital syndrome, Down's syndrome; (2) the radiological scans performed on the skull showed no fractures or any consequences thereof that might suggest their existence, although they did detect the presence of several supernumerary bones associated with the occipital and parietal bones; (3) consequently, and consistent with this documentation, I consider that the child is suffering from a congenital condition not linked to any trauma."²⁵

33. On November 9, 1982, the correctional court issued a ruling of lack of merit,²⁶ arguing that:

[...] even if the version of the plaintiff were true, the purported professional misconduct of Boillos, Degiovanetti, or any of the physicians involved, cannot give rise to any criminal liability if no causal relationship has been proved between the acts charged and the injury caused to the alleged victim.

And that is where the report of the medical examiner is important, at least at this stage of the proceeding, since it infers that, in principle, no such causal relationship exists, given that the girl's condition is congenital and does not appear to be the result of any injury that she might

¹⁹ Annex 11, Expert medical opinion prepared in Montevideo, Uruguay (undated). Enclosed with the State's communication of June 1, 2018.

²⁰ Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

²¹ Article 300 of the Code of Criminal Procedure in force in the Province of Santa Fe at the time provided: *Advance appearance (Comparecencia anticipada). When an individual named in an initial act of a preliminary inquiry appears before the judge of their own volition before the latter has taken cognizance of the case, the explanations and evidence that they wish to provide shall be received without any formalities and for the sole purpose of weighing the prosecutor's order or preventive police custody.*

²² Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

²³ Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

²⁴ Annex 4, Statement of Ofelia Ángela Contreras de Cuello dated November 4, 1980. Enclosed with the initial petition.

²⁵ Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

²⁶ Article 327 of the Code of Criminal Procedure in force in the Province of Santa Fe at the time provided: *Lack of merit. If, within the time set in Article 325, the judge finds that there is no merit to order a trial or to dismiss, they shall issue a ruling declaring as much, without prejudice to the investigation continuing.*

have suffered in the circumstances described above; therefore, there would appear to be no crime to investigate, and the alleged conduct of the accused would thus be confined to the realms of morality or professional ethics."²⁷

34. In March 1983, the case was dismissed in favor of Raquel Gladis Boillos as "no elements of proof have been gathered sufficient to change the situation in the case and be cause for a trial [...]."²⁸

35. In addition, on October 31, 1983, the proceedings in relation to Norma Beatriz Degiovanetti were set aside owing to the fact that "based on an analysis of the steps taken by the police and the statements given to the court by the aforementioned Degiovanetti, it is inferred that the deed that gave rise to those steps is not an offense attributable to the accused."²⁹

2. 2. The civil proceeding against Rosendo García Hospital

36. The case of *Tapia, Florencio v. Rosendo García Hospital, re. Damages (Tapia Florencio c/Sanatorio Rosendo García s/Daños y Perjuicios)* opened in 1980 before the Eighth District Court of First Instance for Civil and Commercial Matters in and for Rosario (hereinafter "Court of First Instance").³⁰ The Commission has no information about any proceedings that may have been conducted between 1980 and 1987, the year in which Mr. Tapia's former lawyer was put on notice so to submit such copies of the case file as he had in his possession so as to allow as faithful a reconstruction as possible of the record of the proceedings.³¹ The former lawyer claimed not to have the requested records in his possession and provided an account of what the suit purportedly contained.³² Based on the foregoing, the IACHR surmises that the judicial authorities in charge lost the record at some point in the intervening period.

37. The judgment at first instance mentioned that in the answer to the suit, the lawyers of UMO, the owner of the hospital, held that [Mrs. Amerise] was "provided all the necessary medical assistance in a professional and efficient way" and that, although there was a precipitous birth in a non-surgical environment, "the child was received by the acting nurse, the physician and the midwife made the delivery, and at no time did the child sustain a blow or anything of that nature";³³ they added that, "according to the medical examination of the child born in that delivery, it is a case of what is termed Down's syndrome, in other words, a congenital malformation"; therefore, in the opinion of the defendants, "that medical situation has no causal link to the delivery."³⁴

38. According to the judgment at first instance of June 12, 1991, the plaintiffs offered as documentary proof a copy of Analía's birth certificate, the complaint and a copy of the record from the criminal proceeding, an administrative proceeding conducted at Rosendo García Hospital, and an anatomical exhibit consisting of the girl's umbilical cord; they also requested numerous witness testimonies, subsidiary confrontations, a visual inspection, a reconstruction of the events, and an expert medical opinion.³⁵ The Commission notes that reference is made to an administrative proceeding apparently carried out at the hospital itself; however, no information is available in relation to that proceeding.

39. The judgment at first instance highlights the testimony of Dr. Melchor, who, "having examined the child, noted psychomotor alterations and a physical habit of a Down's syndrome type, but was unable to say if

²⁷ Annex 3, Ruling of lack of merit dated November 9, 1982. Enclosed with the initial petition.

²⁸ Annex 12, Dismissal ruling dated March [illegible], 1983. Enclosed with the State's communication of June 1, 2018.

²⁹ Annex 13, Decision to set aside dated October 31, 1983. Enclosed with the State's communication of June 1, 2018.

³⁰ Annex 14, Official Letter No. 609 from the Argentine State dated March 27, 2018.

³¹ Annex 10, Judgment No. 187 of the Eighth Civil and Commercial District Court of First Instance in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

³² Annex 10, Judgment No. 187 of the Eighth Civil and Commercial District Court of First Instance in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

³³ Annex 10, Judgment No. 187 of the Eighth Civil and Commercial District Court of First Instance in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

³⁴ Annex X, Judgment No. 187 of the Eighth Civil and Commercial District Court of First Instance in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

³⁵ Annex 10, Judgment No. 187 of the Eighth Civil and Commercial District Court of First Instance in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

that retardation was due to a trauma or Down's syndrome, and said that a blow can cause retardation.”³⁶ In addition, the judge said that [the umbilical cord] was sent to the director of the morgue for an opinion as to whether the cut had been made with a surgical element or by a tear; however, he returned it “without conducting the expert examination requested as it was not based on the specific causes set forth in Article 63 (c) of Decree Law 1285/56.”³⁷ The judge declared the evidence as withdrawn. She also refused to conduct confrontations or a reconstruction of the events; the former, on account of the fact that there were no contradictions between the witnesses or any incompleteness in their statements; and the latter, because she did not consider it appropriate as evidence, since Analía could not be moved from her home and because “since the existence of the unproven fact of the newborn’s fall to the floor as part of the overall evidence is under discussion, it should be concluded that it is no longer a case of reconstruction, but of establishing what did not happen [...]”³⁸

40. Finally, the judgment referred to the expert opinion mentioned herein above, which concluded that “this medical board finds that the presence of a cerebral hemiatrophy of the left side offers the following diagnostic disquisitions (a) the consequence of a previous physical trauma, (b) of an “ex vacuo” hemorrhage resulting from the precipitous delivery, (c) a congenital malformation.”³⁹ The judge found that “the trauma and the hemorrhage are alternative allegations that have not been demonstrated in the proceedings, leaving only the congenital malformation.”⁴⁰ The judge rejected the suit for damages and ordered the plaintiff to pay the defendant's legal costs.⁴¹

41. As a result of the appeal lodged by Florencio Tapia, the acting defender moved that the entire proceedings in the civil suit be vacated under article 59 of the Civil Code,⁴² justifying his request on the fact that no minors defender participated at all in the proceeding, which prevented such a defender from intervening on behalf of the child and impeding the judge from disregarding the production or analysis of evidence of the utmost importance for clarifying the facts.⁴³ In the motion to vacate, the acting defender made reference to the examination of evidence that the plaintiff had requested but which was not realized, “evidentiary procedures that were highly important and valuable for clarifying what happened [...] in spite of which I find no record whatsoever of their production.”⁴⁴ He also referred to evidence that “in some instances was not provided in full, and in others, simply was not produced.” He added that of the 18 witness testimonies proposed, only 8 were presented, “without all available measures being exhausted to produce them all, in spite of the fact that seven witnesses [...] could have helped to clarify what happened, given that they were interned [...],⁴⁵ among others. The acting defender said that the “flaws detailed in the production of evidence left the minor without protection, gravely harming her interests [...]”⁴⁶

³⁶ Annex 10, Judgment No. 187 of the Eighth Civil and Commercial District Court of First Instance in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

³⁷ This provision establishes “[t]he members of the technical bodies and experts: [...] (c) Aside from the ex officio appointments made by judges in criminal matters, in exceptional circumstances, they may be used by judges in other jurisdictions when clear reasons of urgency, poverty, or public interest exist; or when, in the opinion of the judge, the particular circumstances of the case make their advice necessary.”

³⁸ Annex 10, Judgment No. 187 of the Eighth District Court of First Instance for Civil and Commercial Matters in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

³⁹ Annex 10, Judgment No. 187 of the Eighth District Court of First Instance for Civil and Commercial Matters in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

⁴⁰ Annex 10, Judgment No. 187 of the Eighth District Court of First Instance for Civil and Commercial Matters in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

⁴¹ Annex 10, Judgment No. 187 of the Eighth District Court of First Instance for Civil and Commercial Matters in and for Rosario dated June 12, 1991. Enclosed with the initial petition.

⁴² This provision states, “In addition to the necessary representatives, those who are incompetent are represented regardless by the Office of the Attorney General for Minors, which shall be a legitimate and essential party in any judicial or extrajudicial matter, of a voluntary or contentious jurisdiction, in which the incompetent may sue or be sued, or which deal with persons or property, under penalty of nullity of any act and of any trial that may have taken place without its.”

⁴³ Annex 15, Motion to vacate of the acting defender dated April 30, 1993. Enclosed with the initial petition.

⁴⁴ Annex 15, Motion to vacate of the acting defender dated April 30, 1993. Enclosed with the initial petition.

⁴⁵ Annex 15, Motion to vacate of the acting defender dated April 30, 1993. Enclosed with the initial petition.

⁴⁶ Annex 15, Motion to vacate of the acting defender dated April 30, 1993. Enclosed with the initial petition.

42. On July 7, 1993, the First Division of the Court of Appeals for Civil and Commercial Matters accepted the motion and decided "to declare vacated Judgment No. 187/91 and the nullification of the omission to produce evidence offered and furnished at first instance."⁴⁷

43. The Commission has no information regarding the exact sequence of the proceeding following the declaration of vacation but notes that on March 16, 1995, the Third Civil Ombudsperson submitted a brief to the court, saying that "Dr. Lorenzo Gardella makes an expert conclusion of paramount importance, when he says on page 203 of the record: "I consider that the genetic syndrome does not sufficiently explain the extent of the injury in the scan, which could be the consequence of a previous trauma." The brief also refers to the result of the computerized scan, which concludes "moderate cerebral atrophy predominantly of the left side," as well as the finding of Dr. Alfredo Melchor on page 129, where it says that the retardation observed in the girl could have been caused by a blow, given that it was never accredited that she has Down's syndrome."⁴⁸

44. The Ombudsperson also requested confrontations of the medical staff who were involved in Analía's birth, a reconstruction of the events, an expert medical opinion on the umbilical cord, and witness testimony from individuals who were patients at the hospital and knew of the incident. In addition, as evidence she offered the psychological examination of the girl performed by the Office of Psychologists of the Juvenile Court and the testimony of Dr. Odoriso who treated the girl privately.⁴⁹

45. In May 1995, the judge presiding in the case requested the dean of Rosario Medical School for an expert response to 32 questions concerning, *inter alia*: the suitability and monitoring of the administration of oxytocin in the case in question; the neural consequences of obstetric trauma (blows) on newborns; the cause for administering antibiotics, Konokion, and the cold water compresses on the baby's head; the cause of anoxia or hypoxia; the cause of cerebral atrophy; differences between atrophies resulting from anoxia or hypoxia from those derived from Down's syndrome; the nature of Analía Verónica Tapia's injury and the possibility of its cure; characteristics of Analía's mental impairment; the effects of the event on her parents' morale; the nature of the cut on the umbilical cord and the reason for using the rubber plug; respiratory and sanguineous consequences of a precipitous birth in which the umbilical cord is torn. For the purposes of answering the questions, the court sent four images of a nuclear magnetic resonance scan performed on Analía on October 8, 1991, a piece of her umbilical cord, and a rubber plug.⁵⁰

46. In August 1995, the court sent Rosario medical school five additional questions aimed at determining the usefulness of scans for verifying levels of mental impairment, the cost and feasibility of having them done in Argentina, and the existence or not of scientific means for curing or impeding the progress of Analía's mental impairment.⁵¹

47. On February 20, 1996, faced with the delay on the part of the medical school in answering all the questions, the Third Court asked the dean of the school for the details of the persons who had interviewed Analía's parents in 1995, and if the person or persons who would provide the expert psychiatric opinion had been appointed and, if so, that their details be provided to the court, together with what possible relationship, if any, they might have with Rosendo García Hospital or the UOM. The court also requested information on the whereabouts of the images, umbilical cord, and rubber plug that had been sent.⁵²

48. In a note dated February 27, 1996, the Chair of the Department of Diagnostic Imaging and Radiotherapy of Rosario Medical School, Dr. Carlos R. Giménez, replied to 5 of the 32 questions, saying that

⁴⁷ Annex 16, Order 111 of the First Division of the Court of Appeals for Civil and Commercial Matters dated July 7, 1993. Enclosed with the State's communication of June 1, 2018.

⁴⁸ Annex 17, Official letter from the Third Civil Ombudsperson dated March 16, 1995. Enclosed with the initial petition.

⁴⁹ Annex 17, Official letter from the Third Civil Ombudsperson dated March 16, 1995. Enclosed with the initial petition.

⁵⁰ Annex 18, Official letter 1118 dated May 9, 1995, Request for an expert medical opinion to Rosario Medical School. Enclosed with the initial petition.

⁵¹ Annex 19, official letter 2075 dated August 17, 1995, Additional request for an expert medical opinion to Rosario Medical School. Enclosed with the initial petition.

⁵² Annex 20, Official letter 216 dated February 20, 1996, Request for information on the expert medical opinion commissioned from Rosario Medical School. Enclosed with the initial petition.

neither the methods used on Analía—that is, static—nor those proposed by the judge, dynamic, “can measure impairment, or establish its causes. With some pathologies, tests can serve to evaluate their evolution.”⁵³

49. In a report dated July 29, 1996, the Professor of Child Neurology, Dr. Anahí Duque, replied to seven of the remaining questions. The doctor said that cerebral trauma (blow) can lead to localized and unilateral injuries, while with Down's syndrome the atrophy is variable and unspecific; that the general application of cold water compresses can be used to lower temperature; that Konokion is used for vitamin K deficiency and that its use in newborns is normal and widespread; and that the use of cold water compresses, Konokion and antibiotics “would be warranted for an at-risk newborn patient, not specifically as a result of cranial trauma.” She also said that hypoxic-ischemic syndrome in a newborn can derive from structural alterations in the central nervous system, such as cerebral atrophies.” Finally, she said that “to provide a response to questions 14 to 23, would require a correct clinical history, a clinical neurological examination, and a psychopathological evaluation of the family group.”⁵⁴

50. In official letter 2615 of October 30, 1998, the Third Court wrote to the IACHR asking it to suggest or indicate “in what country or foreign medical facility that is not Argentine can the necessary studies be conducted, bearing in mind the required expertise in the case.”⁵⁵ In that letter, referring to [Rosario] Medical School, the judge said that “from the outset there were objections from the plaintiff to the actions of said Medical School, which was entrusted with providing the expert opinion in July 1995 but has so far not managed to begin it, in addition to failing to respond to several official letters from this court containing requests for clarifications and reports. Therefore, it has been decided, at the plaintiff's request, to DO WITHOUT said expert entity, which has already been separated from the proceeding.”⁵⁶ It added that the plaintiff argued for “the need to do without expert medical opinions done in Argentine territory” because he believed that the physicians or medical bodies would be influenced by the UOM.⁵⁷

51. On December 15, 1998, the IACHR advised the court that “the Inter-American Commission on Human Rights is unable to suggest a list of entities or medical facilities that could provide expert opinions, whether Argentine or not, since, apart from not having that information, that is outside its sphere of authority, as established in its Statute and Rules of Procedure. However, you could write to the World Health Organization or the Pan American Health Organization, which could provide you with the guidance that you require.”⁵⁸ On February 25, 1999, the court asked the Pan American Health Organization to suggest a list of medical entities to provide the expert opinion, further to the recommendation of the IACHR.⁵⁹

52. On June 16, 1999, the Pan American Health Organization sent an official letter recommending the appointment as experts of two doctors at the Universidad de la República de Uruguay⁶⁰. On October 19, 2000, the Third Court asked the court with jurisdiction in Montevideo, Uruguay, to ask those doctors if they would be in a position to provide the expert medical opinion, indicating the points to be clarified.⁶¹ The points were the same as those that had been sent previously to Rosario Medical School.

53. On August 29, 2001, the Third Court in and for Rosario wrote to the 20th Civil Court of First Instance in and for the City of Montevideo, Uruguay, enclosing: (1) a certified copy of the statement of Dr. Lorenzo Gardella, neurology specialist; (2) a certified copy of the statement of Dr. Alfredo Melchor, cardiology specialist; (3) a certified copy of the statement of Dr. Jorge Nagel, neurology specialist; (4) a piece of the umbilical cord belonging to Verónica Analía Tapia (*sic*), and a plug; (5) a computerized axial tomography scan, images and

⁵³ Annex 21, Expert opinion on diagnostic imaging from Rosario Medical School dated February 27, 1996. Enclosed with the initial petition.

⁵⁴ Annex 22, Expert child neurology report from Rosario Medical School dated July 29, 1996. Enclosed with the initial petition.

⁵⁵ Annex 23, Official Letter No. 2615 of October 30, 1998, from the Third Court to the IACHR, seeking a suggestion for an expert medical opinion. Enclosed with the initial petition.

⁵⁶ Annex 24, Official Letter from the Third Court to the IACHR, seeking a suggestion for an expert medical opinion, dated December 15, 1998. Enclosed with the initial petition.

⁵⁷ Annex 24, Official Letter No. 2615 of October 30, 1998, from the Third Court to the IACHR, seeking a suggestion for an expert medical opinion, dated December 15, 1998. Enclosed with the initial petition.

⁵⁸ Annex 25, Response of the IACHR regarding an expert medical opinion dated December 15, 1998. Enclosed with the initial petition.

⁵⁹ Annex 26, Official letter 282 of February 25, 1999, addressed to the Pan American Health Organization. Enclosed with the initial petition.

⁶⁰ Annex 27, Response from the Pan American Health Organization of June 16, 1999. Annex to the original petition.

⁶¹ Annex 28, Letter rogatory 2859 of October 19, 2000, from the Third Court. Enclosed with the initial petition.

reports for each test; (6) a nuclear magnetic resonance scan, images and reports; and (7) a video of the reconstruction of the events, for delivery to Drs. Miguel Cherro and Ricardo Bernardi so that they might provide an expert medical opinion.⁶²

54. At the request of the Commission, the State sent a copy of the expert medical opinion prepared in Montevideo, Uruguay⁶³ however, the Commission does not have the date of the expert opinion, an acknowledgment of receipt by the court hearing the case, or proof that the parties had been informed of it.

55. On March 17, 2003, Mr. Tapia presented arguments to the third court in which, *inter alia*, he said that the hospital bore objective responsibility because it was "in its interest," and therefore the burden of proof was on the defendant. In connection with the latter, he said that "the fact that it claimed Down's [syndrome] and then decided not to prove it, is the clearest demonstration that the sued hospital was aware that no such syndrome existed and that it could scarcely present the genetic test, since it was going to come back negative." He also said that the improper administration of oxytocin caused the precipitous delivery and the baby's ensuing fall to the ground, given that the mother was multiparous, dilated to 6 centimeters, and should have been under constant monitoring.⁶⁴

56. On May 20, 2003, the Hospital presented arguments denying "each and every one of the facts, with the exception that the plaintiff was admitted on the day mentioned to give birth and was correctly cared for by the hospital's doctors and nursing staff. Furthermore, we deny the consequences described by the plaintiff." The hospital also contended that "the burden of proof is on the plaintiff, who has not demonstrated in this case the existence of the act giving rise to responsibility or any causal relationship whatsoever [...]."⁶⁵ On March 3, 2004, the court announced the case closed for sentencing and notified the parties thereof on the 9th of that month⁶⁶.

57. On March 23, 2004, the Court of First Instance ordered additional evidence for the purposes of passing judgment, including the appearance of Analía Verónica Tapia.⁶⁷ In that regard, Mr. Tapia called for the judge to recuse herself, on the grounds that "the ordering of additional evidence for judgment and their processing, without either the approval or the consent of the plaintiff, shows that you have not taken cognizance of the facts or circumstances to be addressed with those measures and supposedly missing elements, which are already in the record and for which sufficient evidence has been provided [...]."⁶⁸ He added that since the hospital had alleged that his daughter had Down's syndrome, there was no reason for it to refrain from carrying out the test,⁶⁹ and that it had refused the request of the judge, who asked that the hospital perform the test within 72 hours, saying that three months later the test was assumed discarded.

58. On May 31, 2004, Florencio Tapia filed a petition with the Supreme Court of Justice of Argentina for application of the *per saltum* remedy in the civil proceeding against Rosendo García Hospital.⁷⁰ On October 14, 2004, the Supreme Court of Justice denied the petition, saying that "the matter brought is not compatible with any of the causes that would give this Court jurisdiction under the provisions of Articles 116 and 117 of the Constitution and the laws governing them."⁷¹

59. On November 24, 2006, La Capital newspaper published an edict from the Third Court advising of the compelling need to destroy all the documents corresponding to cases brought before 1996, inclusive, given that the long period of time that had elapsed strongly suggested a lack of interest; December 11, 2006 was set as the deadline "by which parties with a legitimate interest could present themselves to ask to take possession of

⁶² Annex 28, Letter rogatory 2654 of August 29, 2001, from the Third Court. Enclosed with the initial petition.

⁶³ Annex 11, Medical examination conducted in Montevideo, Uruguay (undated). Annex to communication from the State dated June 1, 2018.

⁶⁴ Annex 30, Concluding arguments of the plaintiff in the second civil proceeding, dated March 3, 2003. Enclosed with the initial petition.

⁶⁵ Annex 30, Concluding arguments of the plaintiff in the second civil proceeding, dated March 3, 2003. Enclosed with the initial petition.

⁶⁶ Annex 31, Notification certificates dated March 9, 2004. Annex to the State's communication dated June 1, 2018.

⁶⁷ Annex 32, Order to provide additional evidence for judgment, March 23, 2004. Enclosed with the State's communication of June 1, 2004.

⁶⁸ Annex 33, Mr. Tapia's brief of April 28, 2004. Enclosed with the State's communication of June 1, 2004.

⁶⁹ Annex 33, Mr. Tapia's brief of April 28, 2004. Enclosed with the State's communication of June 1, 2004.

⁷⁰ Annex 34, *Per saltum* petition filed with the Supreme Court of Justice dated March 3, 2003. Enclosed with the initial petition.

⁷¹ Annex 35, Decision denying *per saltum* of the Supreme Court of Justice, dated October 14, 2004. Enclosed with the initial petition.

documents to be destroyed.”⁷² According to the petitioner, on November 27, 2006, Florencio Tapia presented a written communication of “opposition to the destruction of evidence in the trial,” saying that “at no time has the proceeding stopped being moved forward” and that “the provincial courts of Santa Fe and of the Argentine Nation have lost jurisdiction, and that the TRIAL AND EVIDENCE should be preserved and protected as they were part of an OPEN, ONGOING, AND NEVER SUSPENDED PROCEEDING, NOW IN AN INTERNATIONAL VENUE.”⁷³ Based on later information presented by the State in the proceeding before the IACHR, the Commission notes that the record was not destroyed.

60. It is worth mentioning that during the civil suit, Florencio Tapia filed two motions for recusal of Judge Hernán Carrillo, who rejected them,⁷⁴ for which reason he re-filed them with the Fourth Division of the Court of Appeals for Civil and Commercial Matters, underscoring that the case had been at a standstill without a judgment at first instance for more than 28 years.⁷⁵ The Commission has no information regarding the decisions on those recusal motions.

61. There is nothing in the information available to suggest any additional steps in the framework of the proceeding. In addition, from the list of procedural steps sent by the State, the Commission finds that the civil suit has been at a “standstill” since April 18, 2017.

IV. LEGAL ANALYSIS

A. Matter precedent

62. The Commission recalls that, with respect to any member state that has not yet ratified the American Convention, the fundamental rights that the State commits to preserve under the OAS Charter are stipulated in the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”), which is a source of international obligations and establishes the applicable criteria for a matter to be considered by the Commission. In that connection, although the Commission did not refer in the section on characterization of the alleged facts of the admissibility report in this case to the alleged violations in the light of the American Declaration, it should be mentioned that it was established in the section on jurisdiction that the alleged violations would be analyzed in the light of the Declaration or the Convention, depending on the timing of the events. Given the foregoing, in this report, the Commission analyzes what occurred prior to September 5, 1984, under the American Declaration, and what happened thereafter, under the Convention. In any event, the IACHR recalls that in the merits stage it may offer a legal assessment of facts against which the State has had to defend itself, even in relation to articles or instruments not expressly invoked in the section on characterization of the alleged facts in the admissibility report, to the extent that such a determination is of a preliminary nature.

⁷² Annex 36, Edict ordering the destruction of the record, dated November 27, 2006. Enclosed with the initial petition.

⁷³ Annex 37, Request that the record not be destroyed, dated November 27, 2006. Enclosed with the initial petition.

⁷⁴ State's observations on merits, November 15, 2010. Enclosed with the initial petition.

⁷⁵ Annex 38, Official letter 424 from the Eighth District Court of First Instance for Civil and Commercial Matters in and for Rosario. Enclosed with the initial petition.

B. Right to a fair trial^{76/77} and right to judicial protection,⁷⁸ in relation to the right to humane treatment⁷⁹ and the rights of child with disabilities,⁸⁰ all in connection with the obligation to ensure rights⁸¹

1. General Considerations

63. The instant case has to do with proceedings instituted in response to alleged violations of physical integrity as a consequence of events that occurred on the day that Analía Verónica Tapia was born at a private hospital. The petitioner did not allege that there were structural deficiencies at the hospital or any kind of breach of duties in terms of regulation or oversight. The heart of the controversy is the response of the State in relation to the respective judicial proceedings. In that sense, the Commission considers that its legal analysis of the case is framed by the right of access to justice with fair trial guarantees, which, in turn, leads it to analyze whether or not the obligation to ensure Analía Verónica Tapia's right to humane treatment was fulfilled.

64. As it relates to this case, the obligation to ensure rights requires States to prevent, investigate, and punish any violation of the rights recognized by the Convention—or the Declaration—and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.⁸²

65. The Commission has underscored that the obligation of the States to act with due diligence includes enabling access to suitable and effective remedies when human rights are violated.⁸³ As the Commission has noted, the effectiveness of a remedy must be considered in relation to its possibility of verifying the existence of human rights, of remedying them, of making reparation for the damage done, and of punishing those responsible.⁸⁴

66. Citing the Inter-American Court, the Commission has held that recourses that are illusory, as a result of a denial of justice, such as when there is unwarranted delay in the decision, cannot be considered effective. The Commission has also established that an essential element of effectiveness is timeliness; moreover, the right to judicial protection requires the courts to adjudicate and decide cases expeditiously, particularly with respect to urgent cases.⁸⁵

⁷⁶ Article XVIII of the American Declaration states: Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

⁷⁷ Article 8 of the American Convention provides: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

⁷⁸ Article 25 of the American Convention states: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

⁷⁹ Article 5 (1) of the American Convention provides: 1. Every person has the right to have his physical, mental, and moral integrity respected.

⁸⁰ Article VII of the American Declaration states: All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid. The pertinent portions of Article 19 of the American Convention provide: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

⁸¹ Article 1 (1) of the American Convention stipulates: 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

⁸² I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C. No. 4, par. 166.

⁸³ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

⁸⁴ IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, OEA/Ser.L/V/II.129, Doc. 4, September 7, 2007, par. 248.

⁸⁵ IACHR, Report No. 111/10. Case 12.539, Merits, Sebastián Furlan and Family, Argentina, October 21, 2010, par. 94.

67. At the same time, the Commission considers it necessary to incorporate the international *corpus iuris* for the protection of children into its analysis of this case.⁸⁶ The Commission has indicated that “the international *corpus juris* related to minors, as well as to persons with disabilities, is clear about the rules of special protection in judicial proceedings in which minors with disabilities are involved.” The Inter-American Court has held that “the State must pay special attention to the needs and rights of the child, considering [their] particular condition of vulnerability.”⁸⁷ In that connection, Article 3.1 of the Convention on the Rights of the Child is relevant;⁸⁸ it provides: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Furthermore, in Advisory Opinion OC-17/2002, the Court considered that “while procedural rights and their corollary guarantees apply to all persons, in the case of children exercise of those rights requires, due to the special conditions of minors, that certain specific measures be adopted for them to effectively enjoy those rights and guarantees.”⁸⁹

68. The Court has stated that, in order to facilitate access to justice for vulnerable persons, the participation of other State institutions and bodies is essential so that they can assist in the judicial proceedings in order to ensure that the rights of such persons are protected and defended.⁹⁰ In that connection it has reference the United Nations Convention on the Rights of Persons with Disabilities, which contains a specific article regarding the scope of the right to access to justice in which it is provided that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants.⁹¹

69. In addition, the Court has consistently held that if the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible.⁹² The Court has also found that when vulnerable persons are involved, as in the case of a person with disabilities, it is imperative to take the pertinent actions, such as ordering the authorities to give priority to addressing and settling such cases, in order to avoid delays in their processing so as to ensure a prompt decision and execution thereof.⁹³

2. Analysis of the case

2.1. Due diligence

70. The Commission notes that in this case, a criminal case was brought against staff of Rosendo García Hospital, and a civil proceeding for damages, against the hospital itself. Both proceedings opened in 1980.

71. Based on the information in its possession with regard to the criminal proceeding, the Commission finds, first, that at no time was the Office of the Juvenile Defender (*Defensoría de Menores*) informed, in spite of the fact that the interests of a girl, who, moreover, was mentally impaired, were in play. The case was dismissed without that situation being rectified. Nor was the Office of the Juvenile Defender involved in the civil

⁸⁶ IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, par. 149. Cf. *I/A Court H.R., Case of Fornerón and daughter v. Argentina, Merits, Reparations and Costs, Judgment of April 27, 2012, Series C. No. 242*, par. 44; *I/A Court H.R., Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012, Series C. No. 246*, par. 125.

⁸⁷ *I/A Court H.R., Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C. No. 216, par. 201.

⁸⁸ Convention on the Rights of the Child, Resolution 44/25, 20 November 1989.

⁸⁹ *I/A Court H.R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17*, par. 98.

⁹⁰ *I/A Court H.R., Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012, Series C. No. 246*, par. 241.

⁹¹ Article 13 of the United Nations Convention on the Rights of Persons with Disabilities, referenced by the Court in *Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012, Series C. No. 246*, par. 241.

⁹² *I/A Court H.R., Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012, Series C. No. 246*, par. 194. *Case of Valle Jaramillo et al. v. Colombia*, par. 155, and *Case of the Xakmok Kasek Indigenous Community v. Paraguay*, par. 136.

⁹³ *I/A Court H.R., Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012, Series C. No. 246*, par. 93 J. A. Moreno Rodríguez, (nota N° 2), p. 196.

proceeding until that situation was remedied on July 7, 1993, by a decision of the First Division of the Court of Appeals for Civil and Commercial Matters that vacated the judgment. It is worth noting that by then Analía was 14 years old. With regard to the procedural stage at which the judicial authority is required to notify the “juvenile defender,” it is worth highlighting an expert witness statement to the Inter-American Court in *Furlan and Family v. Argentina*, which indicated that “the judge hearing a case in which a minor is involved must immediately request the Juvenile Defender’s intervention [...]”⁹⁴ The State has not explained the absence of that institution’s involvement, either during the criminal proceeding, or during the first 13 years of the civil proceeding.

72. In second place, the Commission notes that in the criminal proceeding, statements were taken from hospital staff and, despite the fact that those statements said that the delivery actually took place as Mrs. Amerise was being moved in a wheelchair, the medical examiner’s opinion said that the delivery occurred in a surgical environment. The Commission has no information to suggest that any steps were taken to clear up the contradicting versions; nor were any measures adopted in relation to the statement of Mrs. Ofelia Ángela Contreras, who was interned at the same hospital on the day of the events.

73. It is also important to highlight that in the ruling of lack of merit issued on November 9, 1982, which led to the decision to dismiss in March 1983, it was asserted that the causal relationship between the acts charged and the injury caused to the alleged victim had not been proved; the foregoing was primarily based on a medical examiner’s opinion that said that it was a case of a “congenital syndrome, Down’s syndrome.” The Commission notes that the court failed to order genetic tests that might have confirmed such an assertion and, thus, determined if there was a causal link between what happened in the delivery and the injuries to Analía’s health. This, in spite of the fact that various opinions indicated that chromosome mapping was not done and that the Down’s syndrome was “presumptive.”

74. No such genetic tests were performed during the civil proceeding either, even though the defendant maintained throughout the proceeding that the impairment was not caused by the delivery, but was a case of Down’s syndrome. The State, through the judicial authorities had it within its power to order such tests to be promptly conducted in order to corroborate or refute the hospital’s argument and clarify the cause of Analía’s impairment. According to the arguments submitted by Mr. Tapia and not contested by the State, the presiding judge agreed to the genetic test, but decided to declare it null and void when the hospital refused to carry it out.

75. Thus, the crucial test—the genetic test, which is not complex and swiftly produces compelling findings—was not carried out in either proceeding. The Commission underlines the fundamental nature of that test for clearing up the main controversy in both the criminal and the civil proceeding, specifically in relation to the causal link. Apart from constituting a clear breach of the duty of due diligence, the IACHR notes the serious impact of that evidentiary omission on the judicial decisions rendered in both proceedings. In the criminal case, the available reasoning suggests that it was assumed to be true that the impairment was congenital without that test. In the civil suit, the reasoning in the decision at first instance was similar in that sense. Although the latter decision was vacated, that fundamental omission has still not been remedied.

76. Apart from the genetic test, as was mentioned, in the motion to vacate the civil proceeding of April 30, 1993, the acting defender listed an array of tests that had not been performed, which, in his view, directly undermined the proceeding and Analía’s interests. Although, as noted, the proceeding was vacated and set back to the evidentiary stage, with the vacation decision itself mentioning that there were evidentiary omissions, there is nothing in the record to suggest that the vast majority of the procedures mentioned were carried out, and 13 years passed before the judge ordered a few of them, such as the expert examination of the umbilical cord, which was declared withdrawn, without seeking an alternative way for it to be performed. The findings of fact show that, in practice, the main evidentiary procedure carried out in the period following the vacation

⁹⁴ Statement by the expert witness Gustavo Daniel Moreno at the public hearing held before the Inter-American Court on February 27, 2012. “[P]roceedings for damages last an average of 4 years; however, they should not last that long. These proceedings should be quicker, not only because of the procedural standards that establish the term for production of evidence and the term that the Judge has to issue the judgment, but also because these terms often fall under an operative framework of spectator judges. The truth is that a process should last no more than 2 years.” I/A Court H.R., Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012. Series C. No. 246.

of the civil proceeding was the expert opinion prepared by the Uruguayan doctors many years later, without there being any record of the effects of that opinion on the proceedings. There is nothing in the record to show that the requested confrontations were held, that statements were taken from other patients, or that a reconstruction was done of the events, among other procedures expressly mentioned by the juvenile defender in his brief of March 16, 1995.

77. In third place, the IACHR notes that the record in the civil proceeding was lost by the judicial authorities, which meant that seven years after the proceeding began the attempt had to be made to reconstruct it. Furthermore, in the course of the civil proceeding, the Commission notes that there were very lengthy periods of time during which there is no record that the judicial authorities pursued any evidentiary procedures to advance and conclude the proceeding. This is analyzed in the next section.

78. In fourth place, the Commission finds that what little evidence gathering did occur focused on whether or not Analía Verónica Tapia fell to the ground, or if her condition was congenital. However, there is nothing to show in the criminal and civil proceeding whether the treatment that Analía's mother received at the time of the birth was properly investigated or looked into, and whether that treatment was appropriate to the specific circumstances of her labor; or, assuming it was considered appropriate, if the necessary safety measures were adopted to prevent a possible precipitous delivery from causing any injuries to Analía. Clarifying such aspects was also important for establishing possible criminal or civil liabilities and the respective reparations.

79. The Commission recalls that the State has a special duty to protect children because of their progressive physical, cognitive, emotional, psychological, and social development.⁹⁵ That duty is heightened when it comes to the enjoyment of the highest attainable standard of health by children, by virtue of their best interests. In this case, the Commission finds that in the course of the two proceedings, the State showed no consideration whatsoever for Analía's situation, given her status as a child with disabilities. In particular, the civil proceeding was conducted without taking into consideration the urgency that was required or the impact that the delay could have on Analía's health and well-being. In sum, the State violated the special duty of due diligence required of it in proceedings relating to children.

2.2. Reasonable time

80. The Commission will analyze the time taken by the civil proceeding, which, at the adoption of this report, almost 39 years after it began, remains unresolved. Accordingly, the Commission will examine the four elements that jurisprudence has established for determining reasonableness of time: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities,⁹⁶ and (d) the general effects on the legal situation of the person involved in the proceeding.⁹⁷

81. As regards the complexity of the matter, the Commission finds that the case is not particularly complex since it concerns a civil proceeding for damages in which it was only necessary to determine: (i) the existence of an injury to a single person, Analía, and (ii) the attribution of that injury to Rosendo García Hospital through its staff, which, as has been established, could have been clarified with a basic genetic test, which was never performed, along with myriad other tests that were requested and likewise omitted, as is analyzed above. The Commission finds that the case did not involve legal or evidence-related aspects or discussions whose complexity might warrant such an inordinately long period of time; the delay in the progress of the civil proceeding for damages in this case cannot be justified by the complexity of the matter.

82. As to procedural activity, the Commission finds that although Analía's father changed lawyers on several occasions, he always remained active in the process; moreover, one of the periods highlighted by the State as being one of procedural inactivity, from 1982 to 1987, was precisely the interval in which the record

⁹⁵ IACHR, *Violence, Children, and Organized Crime*, OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, par. 271.

⁹⁶ I/A Court H.R., *Genie Lacayo Case v. Nicaragua*, Merits, Reparations, and Costs, Judgment of January 29, 1997, Series C. No. 30, par. 77, and *Case of Díaz Peña v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 26, 2012, Series C. No. 244, par. 49.

⁹⁷ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C. No. 192, par. 155, and *Case of Díaz Peña v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 26, 2012, Series C. No. 244, par. 49.

was lost, which was why in 1987 the plaintiff was asked "to submit such copies of the case as he had in his possession so as to allow as faithful a reconstruction as possible of the record of the proceedings."

83. The State argued that, given the nature of the civil proceeding, it was incumbent on Mr. Tapia to move it forward. However, the Court has held that the State in exercise of its judicial functions, has a legal obligation of its own, and therefore the conduct of the judicial authorities should not depend solely on the procedural activity of the petitioner in the proceedings,⁹⁸ which is especially relevant in proceedings in which possible human rights violations are considered, particularly if they affect the situation and high interests of children. Furthermore, the State has not shown how the actions of the plaintiff might have held up the proceeding, or demonstrated that the proceeding could have been resolved within a reasonable time had the plaintiff acted differently.

84. It is worth highlighting the statement of the expert witness Moreno to the Inter-American Court in *Furlan and Family v. Argentina*, who said that proceedings for damages should last no more than two years, and that terms often fall "under an operative framework of spectator judges."⁹⁹

85. The Commission considers that the delay in the process cannot be blamed on the alleged lack of initiative on the part of the plaintiff, especially when it has been demonstrated that the course did not act with the required special due diligence or take into consideration Analía's specific interests. In any event, the IACHR reiterates that the family of Analía Verónica Tapia did remain active throughout the process and even requested that the files not be destroyed in 2006.¹⁰⁰

86. As in previous cases, the IACHR notes that the examination of the element of the conduct of the judicial authorities is closely linked to the infringement of the rights of the interested party.¹⁰¹ Thus, in cases where infringement of the rights of the interested party is of dire importance to a person's life or physical integrity, the European Court has stressed the duty of the State to apply a special degree of diligence.¹⁰²

87. The IACHR established the breach of the duty of due diligence. On that point, the IACHR takes into account the omissions and delays mentioned in that section as well as the fact that following the decision to vacate the civil proceeding, 13 years after that proceeding began the medical school was requested to provide an expert opinion and, specifically, that it answer a series of questions. It was more than one year before some of the questions were answered and, as noted from the official letter sent to the Commission in 1998, the medical school "was entrusted with providing the expert opinion in July 1995 but ha[d] so far not managed to," which was why the court decided to do without that expert body, in keeping with the plaintiff's request. The State has not provided any information explaining its lack of urgency in relation to what was requested. The Commission finds that the judge presiding in the case did not seek to ensure that the deadlines were met and took no steps to prevent the proceeding from stalling.

88. The State has also failed to explain why it took the presiding judge more than one year to send an official letter to the judge with jurisdiction in Montevideo, Uruguay in order to request an expert opinion from

⁹⁸ I/A Court H.R., Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012. Series C. No. 246, par. 169; and I/A Court H.R., 28; *Case of Salvador Chiriboga v. Ecuador*, par. 83; and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru*, par. 76.

⁹⁹ I/A Court H.R., Case of Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012. Series C. No. 246. Statement by the expert witness Gustavo Daniel Moreno at the public hearing held before the Inter-American Court on February 27, 2012. "[P]roceedings for damages last an average of 4 years; however, they should not last that long. These proceedings should be quicker, not only because of the procedural standards that establish the term for production of evidence and the term that the Judge has to issue the judgment, but also because these terms often fall under an operative framework of spectator judges. The truth is that a process should last no more than 2 years."

¹⁰⁰ IACHR. Case of Furlan and Family Members v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246. Statement by expert witness Gustavo Daniel Moreno at the public hearing held on February 27, 2012, before the Inter-American Court: "Damages proceedings last approximately four years on average, however, they should not take this long; these proceedings should be faster, not only because of the procedural rules that set the deadlines for evidence and the deadlines that the judge must set in the judgment, but also because these deadlines often fall within a framework of judges who are mere spectators. The truth is that a proceeding should take no more than two years."

¹⁰¹ IACHR. Report No. 111/10. Case 12,539. Merits. Sebastián Claus Furlan and family. Argentina. October 21, 2010, para. 117.

¹⁰² ECHR, H v. United Kingdom, 8 July 1988, § 85.

the doctors recommended by the Pan American Health Organization, or why it took her another year to send the information on which to base the expert opinion. As mentioned, the Commission does not have the date of receipt of the expert opinion prepared in Montevideo, Uruguay, but notes the lack of judicial steps following the request for said expert opinion. In conclusion, the court's passivity and lack of due diligence are aspects that, as the Inter-American Court has stated, "are very problematic in a case of this nature."¹⁰³

89. In this case there was clearly never any controversy over the fact that Analía had a mental impairment that, according to her father, was the result of deficient care on the part of the staff of Rosendo García Hospital when she was born.

90. Mr. Tapia has argued before the judicial authorities as well as the Commission that the monetary reparation that he hoped to receive when it was determined that Rosendo García Hospital was responsible, was critical for providing Analía with adequate medical treatment by which to correct the impairment. The Commission is not in a position to say whether the treatment that Analía would have received with the reparation payment would have achieved that effect; however, it can say that the delay in the resolution of the process has prevented the responsibility of the hospital, or lack thereof, from being determined in a timely way and, therefore, has denied Analía's family the possibility of an indemnity that would have helped with the special care and assistance that her condition requires. The Commission considers that the effects that the unwarranted delay in the proceeding have had on her condition amount to a separate violation of Analía's right to humane treatment.

91. Based on the foregoing, the Commission concludes that (a) the case was not complex; (b) there is nothing to suggest that the procedural activity of the interested party was negligent or dilatory; (c) the conduct of the judicial authorities was not diligent; and (d) the impairment to Analía as a result of the passage of time was and continues to be severe, bearing in mind the need for timely and effective medical care for her disability. Therefore, the IACHR concludes that there was an unwarranted delay in the proceeding for damages, which has gone on for almost 40 years.

92. Based on the foregoing, the Commission concludes that the State of Argentina is responsible for violation of the right to a fair trial established in the American Declaration, as well as the rights to judicial protection and a fair trial, and the rights of the child with disability recognized in Articles 8 (1), 25 (1), and 19 of the American Convention, taken in conjunction with the right to humane treatment and the obligations established in Articles 1 (1) of the same instrument, to the detriment of Analía Verónica Tapia and her parents.

C. Right to humane treatment (Article 5 [1]) of the parents of Analía Verónica Tapia in connection with Article 1 (1) of the American Convention

93. The Commission and the Inter-American Court have indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims. In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts. The Inter-American Court has indicated that the right to humane treatment of the next-of-kin can be affected by the close family relationship and the efforts made to obtain justice. In this case, given the quest for justice and truth through the above-accredited litigation and the obviously family bond between the parents and their daughter in her seriously vulnerable condition, one can infer that the alleged suffering was only logical.

¹⁰³ I/A Court H.R., *Case of Furlan and Family v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2012. Series C. No. 246, par. 125. In a similar case where the domestic judicial authorities took over two years to collect the medical evidence required by the plaintiff to prove the injuries caused by a traffic accident, the European Court considered that only exceptional circumstances could justify this type of delay. ECHR, *Case of Martins Moreira v. Portugal* (No. 11371/85), Judgment of 26 October 1988, § 58 ("The Court finds it surprising that it took two years to carry out three medical examinations, the longest of which required only fifteen days. Only very exceptional circumstances could justify such a delay").

94. Consequently, the Commission concludes that the State violated the right of Florencio Isidoro Tapia and María Ángela Amerise to have their mental and moral integrity respected, as recognized in Article 5 (1) of the American Convention, taken in conjunction with the obligations set out in Article 1 (1) thereof.

V. PROCEEDINGS SUBSEQUENT TO REPORT No. 8/19

95. The Commission adopted the merits report No. 8/19 on February 12, 2019, comprising paragraphs 1 to 94 above, and transmitted it to the State on April 10 of the same year. In said report, the Commission recommended:

1. To fully remedy the human rights violations declared in this report, both in material and non-material terms. To this end, the State must adopt measures of economic compensation and satisfaction in favor of the victim.
2. To arrange the specialized physical and mental health care measures required by Analía Verónica Tapia, through specialized diagnoses in view of her current condition and in a concerted manner.
3. Ensure that the damages process is resolved as soon as possible and following the standards described in the report, correcting, to the extent possible, the evidentiary omissions and other declared violations.
4. Adopt the necessary measures to ensure that judicial proceedings related to the right to personal integrity of children comply with the standards of exceptional diligence established in the report on the merits, are conducted as a legal duty of the State that does not depend on the impulse of the parties and are resolved within a reasonable time.

96. The Commission received reports from the State regarding compliance with the established recommendations, while the petitioner did not send any observations to said report, repeatedly requesting to refer the case to the Court. During this period, the Commission issued 11 extensions to the State for the suspension of the time provided for in Article 51 of the American Convention. Additionally, the State renewed its willingness to comply with the recommendations and expressly waives the right to file preliminary objections regarding compliance with the time limit provided for in the aforementioned article, in accordance with the provisions of Article 46 of the Commission's Rules of Procedure.

97. On June 4, 2020, the State submitted a proposal for comprehensive reparation and compliance of the recommendations of the IACHR, which included making available the designation of a lawyer specialized in public international law, in an independent and transparent basis, on the terms of the Collaboration Agreement in force between the Secretary's Office and the Rosario Lawyers' College.

98. Regarding the **first recommendation**, the State proposed the granting of a life pension by governmental decree equivalent to a minimum salary of the Secretariat of Human Rights of the Province of Santa Fe, in an actualizable amount of between 20,000 and 25,000 Argentine pesos. It also gave the option, instead of the life pension, of paying a one-time fixed amount. Furthermore, it proposed measures aimed to provide comprehensive reparation, including housing assistance, free legal assistance in the guardianship process and in the registration process of Analía Tapia's family house; and to advance the processing of the national disability pension. In addition, the State proposed satisfaction measures that include social tourism and scholarships for education and training for Analía Tapia's sister.

99. Regarding the **second recommendation**, the State proposed to provide an interdisciplinary team to take the necessary steps to update diagnoses and carry out the necessary care, with the permanent accompaniment of the same team in the treatments, providing six-monthly reports on progress and follow-up.

100. Regarding the **third recommendation**, the provincial state reported that, since December 2019, the Secretariat for Human Rights and Diversity of the Province of Santa Fe participates in the civil and commercial

process to contribute to the promotion of legal actions in favor of victims and access to a jurisdictional response.

101. Regarding the **fourth recommendation**, the State referred to a series of provincial laws and decrees adopted since 2008 related to the protection of the interests of Children and Adolescents. The State indicated that on February 28, 2020, it appointed the Office of the Defender of the Rights of Children and Adolescents, an institution created with the sanctioning of the Law for the Comprehensive Protection of the Rights of Children and Adolescents (Law 26.061) in 2005. The State considers that this represents a significant step forward in the matter, in line with the determinations of the IACHR in the case.

102. The pecuniary reparation was not accepted by the petitioner and on September 3, 2020, the IACHR held a working meeting with the parties.

103. On February 23, 2021, the Province of Santa Fe presented a second proposal for full compensation, which included a monetary compensation of five million Argentine pesos (\$5,000,000.-), which was rejected by the petitioner, considering it a "mockery and an attack on the integrity of Analía and the family".

104. On April 21, 2021, the IACHR informed the parties that the pecuniary reparation presented by the State was adequate, considering the nature of the violations declared in the Merits Report.

105. On May 3, 2021, the petitioner submitted a counterproposal, reducing its original request for pecuniary reparation by half and accepting other proposals made by the Province of Santa Fe.

106. On May 4, 2021, regarding the second recommendation, the State informed that it requested admission and comprehensive medical care at the "Policlínico San Martín", which made it possible to carry out medical evaluations and treatment for Analía Tapia and her mother. The State added that it offered mental health care to both through the Provincial Directorate of Mental Health and, based on Analía Tapia's Unique Certificate of Disability, attendance at a Therapeutic Educational Center was also proposed.

107. With respect to the third recommendation, the State indicated that the current state of the case file requires that the parties involved in the proceedings (Tapia family -acting party- or Sanatorio Rosendo García -defendant) request the Court to issue a call for "proceedings for judgment" and notify the parties, in order to complete what was done during the proceedings and make it possible for a judgment to be issued.

108. On April 21, 2021, the Commission reported that "the pecuniary reparation presented by the State would be adequate, taking into account the nature of the violations declared in the Merits Report". Faced with this, the petitioner expressed its opposition, indicated that the IACHR does not have the power to do so and that no formal resolution was issued. For its part, it sent a counterproposal in which it reduced the amount of compensation by half (US\$12.5 million) and accepted the Province's proposals regarding the other measures of reparation.

109. On May 25, 2021, the Commission called for a second working meeting for June 7 of the same year, and the petitioner replied that it would not meet until there was an agreement with the State on the amount of the reparation.

110. On June 3, 2021, the IACHR transmitted a technical note to the parties in which it offered some parameters regarding reparations to guide in the compliance with the recommendations set forth in the Merits Report.

111. On June 7, 2022, the Province of Santa Fe issued Decree No. 0893 formalizing the proposal for comprehensive reparations made by the province in the case in question, raising the indemnification offer to 6 million Argentine pesos.

112. The Commission evaluated the compliance agreement proposal presented by the State, which contemplates measures of economic compensation, satisfaction, health care, promotion of civil proceedings

and measures of non-repetition, and concluded that it is compatible with the Inter-American standards on integral reparation, considering the nature of the violations declared in the Merits Report.

113. After evaluating this information on the status of compliance with the recommendations, on June 27, 2022, the Commission decided not to send the case to the Inter-American Court and to proceed with the publication of the Report on the Merits, in accordance with the provisions of Articles 51 of the American Convention and 47 of the Rules of Procedure of the IACHR.

VI. ANALYSIS ON COMPLIANCE WITH THE RECOMMENDATIONS

114. The parties held two meetings on August 30, 2022, and September 6, 2022. The petitioner stated that they would continue to evaluate the possibility of accepting the reparatory measures proposed by the State and requested that the possibility of Analía Tapia attending equine therapy be added as a point of agreement. In response to this request, the State established telephone communication with the president of the “Integral Equestrian Association of Rosario” and then informed Miriam Tapia of the possibility of Analía Tapia attending there, with the support of the Secretary of Human Rights.

115. On July 12, 2023, the petitioner informed the IACHR that the State offers were insufficient and reiterated “that the only way forward is to refer the case to the H. Court”.

116. On April 9, 2024, the State indicated that on June 29, 2023, a meeting was held with the representatives of the petitioner and they agreed to provide a response on the proposal for reparations. It reported that, to date, it had not received any communication from the Tapia family or their representatives. It considers that the Province of Santa Fe has always shown its willingness to move forward in the dialogue and rapprochement with the petitioner. It considers that there was “no doubt as to the reasonableness of the State's proposal that was not heeded or accepted by the petitioner” and requests the IACHR to publish the Report.

117. The IACHR values the proposals presented by the State to reach an agreement on compliance with the recommendations and the active participation of the victims in the negotiations. The Commission reiterates that the pecuniary reparation proposed by the State to comply with the first recommendation of the Merits Report is consistent with inter-American standards on reparation, considering the nature of the violations that were declared.

118. The Commission notes that, despite the State's efforts, the reparation proposal, which is intended to comply with the three recommendations of the IACHR Merits Report, has not been accepted by the victims' representatives, who consider it insufficient. Therefore, the State has not yet been able to comply with the recommendations. The Commission calls on the victims and their representatives to reconsider the State's proposal, and to ensure that it contributes to making reparations to Analía Verónica Tapia and her parents.

119. Finally, the Commission recalls that having decided not to send the present case to the Court, in accordance with Article 51 of the American Convention on Human Rights, it will follow up on compliance with its recommendations through the procedure established in Article 47 of its Rules of Procedure and the consequent publication of the report.

VII. ACTIONS FOLLOWING REPORT No. 20/25 AND INFORMATION ON COMPLIANCE

120. On March 29, 2025, the Commission adopted Merits Report No. 20/25, which includes paragraphs 1 to 191 above, and issued its final conclusions and recommendations to the State. On April 1 of that year, it transmitted the report to the State and the petitioning party, giving them two weeks to inform the IACHR of the measures taken to comply with its recommendations. In the absence of a response, on May 19, 2025, the IACHR reiterated its request for information. To date, the Commission has not received a response from the Argentine State regarding Report No. 20/25.

VIII. CONCLUSIONS AND FINAL RECOMMENDATIONS

121. The Commission concludes that the State of Argentina is responsible for the violation of Article XVIII of the American Declaration (right to justice), 8(1) and 25(1) (judicial guarantees and judicial protection), in relation to Articles 5(1) (right to integrity) and 19 (rights of children with disabilities) of the American Convention, in relation to the obligations established in Article 1(1) of the same instrument, in prejudice of Analía Verónica Tapia and her parents, in the terms detailed throughout the report. Additionally, the IACHR concludes the responsibility of the State of Argentina for an autonomous violation of the personal integrity of Analía Verónica Tapia's parents.

122. Based on the analysis and conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REITERATES ITS RECOMMENDATIONS TO THE STATE OF ARGENTINA,

1. To fully remedy the human rights violations declared in this report, both in material and non-material terms. To this end, the State must adopt measures of economic compensation and satisfaction in favor of the victim.
2. To arrange the specialized physical and mental health care measures required by Analía Verónica Tapia, through specialized diagnoses in view of her current condition and in a concerted manner.
3. Ensure that the damages process is resolved as soon as possible and following the standards described in the report, correcting, to the extent possible, the evidentiary omissions and other declared violations.
4. Adopt the necessary measures to ensure that judicial proceedings related to the right to personal integrity of children comply with the standards of exceptional diligence established in the report on the merits, are conducted as a legal duty of the State that does not depend on the impulse of the parties and are resolved within a reasonable time.

IX. PUBLICATION

123. In accordance with the foregoing and pursuant to Article 51(3) of the American Convention, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the rules established in the instruments that regulate its mandate, will continue to evaluate whether the State of Argentina has provided full reparation to the victims in accordance with the recommendations set forth above, until it determines that full compliance has been achieved.

Approved by the Inter-American Commission on Human Rights on July 14, 2025. (Signed): José Luis Caballero Ochoa, President, Arif Bulkan, Second Vice President, Roberta Clarke; Carlos Bernal Pulido and Edgar Stuardo Ralón Orellana, Members of the Commission.