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Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo.
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Represented by:	APPLICANTS: the Office for Coordination Against Police and Institutional Repression, the Center for Legal and Social Studies and the Center for Justice and International Law
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## I. BACKGROUND

1. On May 13, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a complaint about the violation by the Republic of Argentina (the "State", the Argentine State" or "Argentina") of the rights protected under the American Convention on Human Rights (hereinafter the "American Convention") of Walter David Bulacio. Mr. Bulacio is represented before the Commission by the Office for Coordination Against Police and Institutional Repression (CORREPI); the Center for Legal and Social Studies (CELS) and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners"), who allege violation of Articles 4 (life); 5 (humane treatment); 7 (personal liberty); 8 (a fair trial); 25 (judicial protection), all of them in relation to Article 1(1) of the American Convention on Human Rights.

## II. CONTEXT

2. On April 19, 1991, at approximately 11:00 p.m. during a planned police operation, the Argentine Federal Police arrested 73 people because they were in the vicinity of the stadium of the National Public Sanitation Works Club in Libertador Avenue, on the corner of Juana Azurduy Street, in the city of Buenos Aires. This was "the site of a rock concert, for which all the tickets had been sold out, which was the reason why these people remained there without justification". According to the evidence, several of them were beaten by the police agents and, long before the concert started, there was an important deployment of police on the site under the

command of Police Captain Miguel Angel Espósito, who was responsible for Police Station No. 35 with jurisdiction in that area.

3. Although there were minors among those arrested, the Juvenile Correctional Judge on duty was not informed of their arrest because, according to Police Captain Espósito's report, he acted unofficially applying Memorandum N° 40 of the Directorate of Judicial Affairs of the Federal Police, which had been adopted on April 19, 1965.

4. Memorandum N° 40 partially contravened the provisions of Law N° 10.903 enacted in 1919, which regulates the Child Welfare Agency. This law expressly excludes police competence in the area of juvenile misdemeanors and minor offenses; only the correctional judges assigned by the law have competence in this area.

5. As a result of these facts, the State has invalidated Memorandum N° 40. Subsequently, the Criminal Procedural Code was reformed, the 1994 National Constitution was enacted, and on October 1st, 1996, the Constitution of the city of Buenos Aires entered into effect. Articles 10 and 13 of the latter guarantee individual liberty and, among other matters, prohibit officials from taking declarations from detainees in the presence of police authorities, placing them in solitary confinement, establishing the social danger without a crime, and placing those arrested for minor offenses in preventive custody.

### III. FACTS DENOUNCED

6. According to the complaint, Walter Bulacio, 17 years of age, was arbitrarily arrested in the vicinity of the stadium during a planned police operation on April 19, 1991, and taken to the "juvenile section" of Police Station No. 35, together with another ten minors. The following day, April 20, at 6.00 a.m., Walter Bulacio vomited and five hours later, at 11.00 a.m. he was transferred to the Pirovano Municipal Hospital in an ambulance with police custody, without either his parents or a judge being advised. The doctor who attended him diagnosed a "head injury", and this was recorded in the duty log. During the afternoon, he was transferred to the Fernandez Municipal Hospital so that a x-rays could be taken, and here he told the doctor who attended him that he had been beaten by the police. His parents heard about his arrest from a neighbor on the evening of April 20 and visited him in the Hospital, observing facial bruising produced by the blows.

7. At midday on April 21, he was transferred to the Mitre Clinic and, accordingly, the Pirovano Hospital doctor prepared a medical certificate stating that Walter Bulacio had suffered "various blows to the face with a 36-hour evolution". The doctor on duty at the Mitre Sanatorium reported by telephone to Police Station No. 7 that "a minor with injuries" had been admitted, and an investigation was initiated for the crime of bodily injuries.

8. Two days later, on April 23, National Juvenile Court of First Instance for Investigation of Criminal Offenses N° 9 was informed of the case. Walter Bulacio died five days after his arrest, on April 26, 1991. The hospital denounced this to the competent judicial authorities. The autopsy established the existence of marks produced by blows from a hard instrument on his face, his legs and the soles of his feet.

9. On April 26, when the minor died, National Juvenile Court N° 9 declared itself incompetent and referred the case to National Court of First Instance for Investigation of Criminal Offenses N° 5 for adults. The parents of the minor came forward as complainants on May 2, 1991, and the Court decided to divide the case, retaining the investigation of the bodily injuries and death of Walter Bulacio in Court of Investigation N° 5, and referring the investigation of the circumstances of the arrests and additional illegal acts committed against other persons to National Juvenile Court N° 9.

10. National Juvenile Courts Nos. 9 and 16 declared themselves incompetent to hear the case, on the basis that it was not possible to divide the subject of the procedure in view of the context of violence narrated by the young people. On May 22, 1991, the Special Division of the Appeal Court decided to merge the case and referred the case records to Juvenile Court N° 9. This Court decided to prosecute Police Captain Espósito for the crimes of unlawful deprivation of liberty, abuse of authority and misconduct in public office, and took an unsworn statement from him.

11. During the following seven months, the judge took nearly 200 witness statements from those arrested and from the police who were present during the police operation. The complainant read these statements for the first time on December 28, 1991, and requested that all those involved, including those above Police Captain Espósito in line of authority should be prosecuted.

12. On February 12, 1992, the prosecutor requested that the case against the defendant should be dismissed and the proceedings filed. On March 20, 1992, National Juvenile Court N° 9 committed Police Captain Espósito to preventive custody for the crime of aggravated unlawful deprivation of liberty and ordered an attachment for \$90,000; the case against him for the other crimes was provisionally dismissed.

13. The defendant's lawyer lodged an appeal against this decision. On May 19, 1992, the National Criminal and Correctional Appeal Court revoked the preventive custody because "even though the procedure was clearly unconstitutional, it was possible that Espósito did not realize this" and because his conduct was "a normal police practice". The petition for review that the complainant immediately lodged before the Chamber was disallowed.

14. National Juvenile Court N° 9 ordered a temporary stay of the case. Both parties appealed this decision. The complainant requested a reversal of judgement and a new trial, while Police Captain Espósito's defense counsel requested that the case should be dismissed. On November 13, 1992, the Appeal Court (Chamber VI) decided to dismiss the case, "regardless of the political connotations that some people are attempting to attribute to the proceedings"; however, it reiterated that the arrests were unconstitutional. The petitioner then presented an objection to the Judges of the Appeal Court (Chamber VI); but the Appeal Court (Chamber VII) disallowed this. Furthermore, he requested that the judges should be impeached and this was never resolved.

15. In view of the Appeal Court's decision to dismiss the case, the complainant successively filed special appeal proceedings and lodged a complaint appeal. The Appeal Court (Chamber VI) disallowed the former appeal on February 12, 1993, because there was "no assumption" of

unconstitutionality in the criminal behavior. The Argentine Supreme Court decided the latter appeal on April 5, 1994, fourteen months after it was lodged, by revoking the dismissal because it was not "a valid jurisdictional act" as it lacked legal grounds and facts. According to the petitioners, it took more than five months to transfer the case from the Supreme Court to National Juvenile Court N° 4, although both offices are located in the Palace of Justice, one on the fourth floor and the other on the sixth.

16. On September 30, 1994, National Juvenile Court N° 4 ordered that Police Captain Espósito should be placed under preventive arrest for the crime of 73 instances of aggravated unlawful deprivation of liberty--among them Walter Bulacio--and an attachment for \$100,000. At the end of February 1995, the defense counsel lodged an appeal before the higher instance, which confirmed the preventive custody. Nevertheless, as the requirements for release from custody were fulfilled, this was conceded.

17. On September 20, the summary procedure was reopened and Fabian Sliwa, a former officer, who, according to his declarations to the press, had observed the physical punishment that Police Captain Espósito had meted out on Walter Bulacio, was summoned to make a witness statement. The defense counsel tried unsuccessfully to object to this witness. The day established for taking Sliwa's witness statement, he challenged the judge but National Juvenile Court N° 2 disallowed this because the minor had died. The defense counsel appealed the disallowing of the recusal but the Appeal Court (Chamber VI) confirmed the decision during May 1995.

18. Subsequently, the Police Captain's defense counsel filed a special appeal ("planteo de especialidad"), requesting the participation of a Court of Investigation--for adults--rather than the National Juvenile Court that had been hearing the case since 1991. Following Sliwa's testimony, National Juvenile Court N° 4, and National Court of First Instance for Investigation of Criminal Offenses Nos. 5 y 32 declared themselves incompetent. On June 20, 1995, the latter returned the case to National Juvenile Court N° 4, which, in turn, elevated it to the Appeal Court (Chamber VI). Two months later, the latter decided that National Juvenile Court N° 4 should continue with the case because the summary procedure was almost complete.

19. In November and December 1995, National Juvenile Court N° 4 requested various measures to confirm the witness Sliwa's version, such as handwriting expertise and testimony confirming that Sliwa was present in Police Station No. 35 in the early morning hours of April 19, 1991. In February 1996, it ordered confrontations between Sliwa and several former police agents who confirmed that "Sliwa saw something that night and did not know whether to keep quiet for ever or denounce it" and that, for several years, he consulted about his doubts before appearing before the Judge. In March 1996, National Juvenile Court N° 4 ordered a temporary stay of the case against Police Captain Espósito for the crimes of the bodily injuries, torture and death of Walter Bulacio, considering that Sliwa's testimony was weak because he had been sentenced in another criminal case.

20. The defense counsel filed an incidental plea of appeal requesting the dismissal of the case against police Captain Espósito for the death of Walter Bulacio. The Appeal Court (Chamber VI) disallowed the appeal on June 19, 1996. The case file was returned to National Juvenile Court N° 4 with no new evidence about who was responsible for the death of Walter Bulacio.

21. The principal trial documents were presented to Trial Court "W" at the trial stage--system prior to the last reform of the Criminal Procedural Code--where the prosecutor presented his indictment on April 18, 1996. On behalf of the 73 victims, the prosecutor formally requested that Police Captain Espósito should be sentenced to 15 years prison to be served in full and 30 years absolute ineligibility from exercising public functions. On May 16, 1996, the complainant, representing the parents of Walter Bulacio, presented charges and called for 6 years prison and 12 years ineligibility for the crime of aggravated unlawful deprivation of liberty.

22. On June 28, 1996, the final date for presenting the defense plea, Police Captain Espósito's lawyer presented an appeal of lack of jurisdiction, requesting that the documents relating to the legal proceedings should be transferred to the Federal courts. In the same document, he objected to the prosecutor, based on her manifest enmity because she had brought the charges. In August 1996, Trial Court "W" disallowed the prosecutor's recusal before resolving the "lack of jurisdiction". The defense counsel appealed, and the Appeal Court (Chamber IV) disallowed the appeal on October 10, 1996. Finally, the defense filed a complaint appeal which was disallowed on October 24, 1996.

23. On December 2, 1996, Trial Court "W" heard the incidental plea for "lack of jurisdiction" which was declared to be "a matter of law". On December 16, 1996, having observed that the defense counsel had offered documentary evidence, the judge revoked the previous decision and began taking testimony on the incidental plea. The office of the prosecutor and the complainant did not consider it necessary to present evidence. On March 4, 1997, an official note was sent to the Federal Police requesting them to provide further information on Memorandum N° 40--if it was taught in police academies and entrance courses--and other information requested by the defense counsel to uphold that this was a federal issue. The appeal was disallowed on March 26, 1998--22 months after the defense counsel had lodged it--and the parties were notified on April 7, 1998. At the date on which the Commission approved this report, the judgement was not firm and was going to be elevated to the Appeal Court for Criminal and Correctional Matters (Chamber VI) for consideration.

24. Since March 1996, there has been no progress in clarifying the circumstances surrounding the facts or those responsible. More than 7 years after the arrest and death of Walter Bulacio, there is still no judgement of first instance.

25. The complaint mentions that since December 1996, the only activity carried out by Trial Court "W" has been to address three notes to the Federal Police. The first two requested reports on administrative issues linked to Memorandum N° 40 and the statutory faculties of police captains, while the third one added the 1997 agreements between the Head of Government of the city of Buenos Aires and the Federal Police hiring the latter to organize and control vehicle transit in the city. The complainant has insistently requested that the case for unlawful deprivation of liberty should be reopened.

26. Since 1994, Police Captain Espósito is being judicially prosecuted for the crime of unlawful deprivation of liberty against seventy-three people; there is an order of preventive custody against him, but with release from custody. However, the petitioners indicate that his

career in the police force has continued in different positions of authority and he has even led a delegation in charge of carrying out all the police operations in the Federal Capital. Police Captain Espósito ceased to belong to the active ranks of the Argentine Federal Police in December 1995. At that time, he requested his retirement, after his career had culminated with the position of instructor at the Ramón L. Falcón Police School, according to press reports which the State has not denied.

#### IV. PROCEEDING BEFORE THE COMMISSION

27. On May 16, 1997, the Commission requested information from the State on the facts alleged by the petitioners. The State requested three consecutive extensions: the first on August 15, 1997, which was granted for 30 days on August 19; the second, on September 16, which was granted for 30 days as of September 22; the third, requested on October 22, which was granted until November 15, 1997.

28. On November 18, 1997, the Commission received the State's reply and forwarded it to the petitioners on November 21. They requested an extension on December 23 and this was granted for 30 days on January 14, 1998.

29. On February 26, 1998, the Commission held a hearing to discuss the admissibility of the case during its 98th Session.

#### V. POSITION OF THE PARTIES ON ADMISSIBILITY

##### A. Position of the petitioners

30. With regard to the admissibility of the complaint, they affirm that since 1991, when the events occurred, there has not been a firm judgement on the facts under investigation. Consequently, there are two grounds for exception to the rule contained in Article 4(1)(a) of the American Convention; that the domestic legislation of the State concerned does not afford due process of law for the protection of the rights that have allegedly been violated Article 46(2)(a) and that there has been an unwarranted delay in rendering a final judgement under the aforementioned remedies Article 46(2)(c).

31. They allege that the State's unwarranted delay in determining responsibilities for the facts reported constitutes a violation of Article 8 of the American Convention. During the proceedings, the judicial authorities have been responsible for delays on simple matters and also the defense counsel has used delaying tactics. Currently, the case is paralyzed and the "incidental plea of lack of jurisdiction" has not been resolved; this is neither complex nor difficult. Furthermore, since March 1996, there has been no progress in clarifying the circumstances surrounding the facts denounced.

##### B. Position of the State

32. The State alleges the non-admissibility of the complaint because domestic remedies have not been exhausted and because the facts alleged by the petitioner do not constitute violations of rights protected in the Convention.

33. It asserts that domestic remedies have not been exhausted in accordance with international law because the case is still pending judgment by the trial judge and, if appropriate, the verdict could be appealed, and even the object of a special appeal proceedings and a complaint appeal if this was not conceded.

34. It alleges that there has not been an unwarranted delay and denies a lack of interest by the judicial authorities or that the investigation has not prospered because the investigators were the same people who were under investigation. The State maintains that the effectiveness of the remedies has been proved in these proceedings up until the judgement of the Argentine Supreme Court of Justice of April 5, 1994.

35. The State considers that the exercise of the defendant's right to defense requires time and, to some extent, controls the case. The defendant's pleas, appeals, challenges and other proceedings prevent other decisions being adopted because the case is blocked by the various appeals; nevertheless, this shows that he is exercising his legal rights. The time taken by these measures cannot be attributed to the Judiciary.

36. Furthermore, it mentions that the purpose of the delay was so that justice should be done. In the process, proceedings were revoked and the case was recommenced twice due to the exercise of the defendant's right to defense and because of the State's control of decisions.

## VI. JURISDICTION

37. The petitioner has locus standi to appear before the Commission because the facts occurred in Argentine territory. The State has not disputed the petitioner's competence to act or the Commission's competence to examine the matter. Consequently, the Commission declares that it is competent to investigate the complaint.

## VII. ADMISSIBILITY

### A. Exhaustion of domestic remedies

38. The Commission observes that the State disagrees with the application of the exceptions to the rule of the exhaustion of remedies set forth in Article 46.2.a, as regards the existence in the domestic legislation of the State concerned of the due process of law for the protection of the rights that have allegedly been violated; and in Article 46(2)(c) as regards the unwarranted delay in rendering final judgement under the aforementioned remedies.

39. According to jurisprudence of the Inter-American Court of Human Rights, the State has the burden of proof in relation to the exhaustion of remedies in each case: "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective".[FN1]

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[FN1] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgement of June 26, 1987, Series C, N° 19, par. 88.  
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40. The State has not disputed that there has been a delay in pursuing the criminal action to investigate the facts, but maintains that this has been justified for different reasons, among these, the exercise of the defendant's right to defense and the interest that justice should be done. In this respect, the Commission observes that over seven years have elapsed since April 1991. It is clear from the description of the steps taken in Argentina to determine the circumstances of the arrest and death of Walter Bulacio that the investigation has not resulted in those responsible being punished. Consequently, prima facie, there has been an unwarranted delay in rendering a final judgement in the present case.[FN2]

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[FN2] When analyzing the admissibility of petitions where there is an alleged delay in judgements in criminal procedures, the European Commission on Human Rights has considered that prima facie, the delay was excessively long in the following cases: 17 years for the Trier proceedings in the Eckle case; over 12 years in the Huber case; 12 ½ years in the Baggetta case; nearly 10 ½ years for the Cologne proceedings in the Eckle case; 9 years in Milasi; 7 years in Neumeister and 5 ½ years in the Ventura case. Cited by Stavros, Stephanos. "The Guarantees for Accused Persons under Article 6 of the European Convention on Human Rights". International Studies in Human Rights. Martinus Nijhoff Publishers. p. 92.  
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41. The Commission considers that it is not necessary to give an opinion on the exception established in Article 46(2)(a), as the exception to the rule of exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention is applicable.

B. Characterization of the violations of the rights guaranteed in the Convention

42. Furthermore, the Commission considers that, in principle, the petitioner's submission refers to alleged bodily injuries that could typify a violation of the rights guaranteed in Articles 4, 5, 7, 8, 25 and 1(1) of the American Convention. The Commission concludes that the requirement established in Article 47(b) of the American Convention has been satisfied.

VIII. CONCLUSIONS

43. The Commission concludes that it is competent to hear this case and that it is admissible according to the requirements set forth in Articles 46 and 47 of the American Convention.

44. Based on the above conclusions of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To send this report to the Argentine State and to the petitioner.
3. To make itself available to the parties in order to reach a friendly settlement based on respect for the rights protected in the American Convention and to invite the parties to comment on this possibility within 30 days.
4. To continue analyzing the merits of the case.
5. To publish this report and include it in the Commission's Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights (IACHR), in the city of Caracas, Venezuela on the 5th day of the month of May 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejia, Claudio Grossman and Hélio Bicudo.