In the Bulacio Case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to Articles 29, 55, 56 and 57 of the Rules of Procedure of the Court [FN1] (hereinafter "the Rules of Procedure") and Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), the Court issues the following Judgment in the instant case.

[FN1] Pursuant to the March 13, 2001 Order of the Inter-American Court of Human Rights on transitory provisions of the Rules of Procedure of the Court, the instant Judgment is issued under the terms of the Rules of Procedure adopted in the September 16, 1996 Order of this Court.

I. INTRODUCTION OF THE CASE

1. On January 24, 2001, pursuant to the provisions of Articles 50 and 51 of the American Convention on Human Rights, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the Republic of Argentina (hereinafter "the State" or "Argentina") originating in complaint No. 11,752, received at the Secretariat of the Commission on May 13, 1997.

2. In light of the above, the Commission asked the Court to find that there was a violation of the rights of Walter David Bulacio under Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 19 (Rights of the Child), as well as Articles 8 (Right to Fair Trial) and 25 (Right to Judicial Protection) to his detriment and that of his next of kin, all of them in combination with Article 1 (Obligation to Respect Rights) of the American Convention. The Commission also asked the Court to order the State to adopt various measures of pecuniary and non-pecuniary reparation (infra 82, 92, 107, and 147).

II. THE FACTS

3. The submissions by the Commission and by the Center for Justice and International Law (hereinafter "CEJIL"), the Centro de Estudios Legales y Sociales (hereinafter "CELS") and the Coordinadora contra la Represión Policial e Institucional (hereinafter "CORREPI"), who also act as representatives of the next of kin of the alleged victim (hereinafter the "representatives of the alleged victim"), show the following facts:

1) on April 19, 1991, the Argentine Federal Police conducted a massive detention or "razzia" of "more than eighty persons" in the city of Buenos Aires, near the stadium Club Obras Sanitarias de la Nación, where a rock music concert was to be held. One of the detainees was Walter David Bulacio, a seventeen year-old, who after his detention was taken to the 35th Police Station, specifically to its "juvenile detention room". At this place, police agents beat him. The detainees were gradually set free without any criminal charges being filed against them, and the reason for their detention is unknown. In the case of the minors, the Juvenile Correctional Judge on duty did not receive notice, as required by law No. 10,903 and, in the specific case of Walter David Bulacio, his next of kin were not informed either. During their detention, the minors were held under inadequate detention conditions;
2) on April 20, 1991, after having vomited in the morning, youth Walter David Bulacio was taken to the Pirovano Municipal Hospital in an ambulance, without informing his parents or the Juvenile Judge. The physician who examined him at the hospital pointed out that the youth showed injuries and he diagnosed a "cranial traumatism." That same afternoon, the alleged victim was taken to the Fernández Municipal Hospital for an x-ray study and was taken back to the Pirovano Municipal Hospital. Walter David Bulacio told the physician who examined him that he had been beaten by the police, and that night he was visited at this hospital by his parents, who had shortly before heard from a neighbor what had happened to their son;
3) on April 21, 1991, minor Walter David Bulacio was transferred to the Mitre Sanatorium. The physician on duty reported to the 7th Police Station that "a minor with injuries" had been admitted and, therefore, that Police Station opened a police investigation for criminal injuries;
4) on April 23, 1991 the 9th National Juvenile Criminal Trial Court (hereinafter "the 9th Court") took cognizance of the injuries suffered by Walter David Bulacio;
5) on April 26, minor Walter David Bulacio died. On April 30, 1991 the aforementioned Court declared that it did not have jurisdiction and it forwarded the case "against NN for injuries inflicted on Walter [David] Bulacio, followed by death" to the 5th National Criminal Trial Court (hereinafter "the 5th Court"), which heard crimes committed by adults. The parents of the alleged victims appeared as applicants before the 9th Court on May 3 in the case regarding the circumstances under which the detentions took place and the other crimes committed against

Walter David Bulacio and other persons. The case was divided and the 5th Court retained the investigation regarding the injuries and death of Walter David Bulacio;

6) The 9th and 16th National Criminal Juvenile Trial Courts disqualified themselves regarding the detentions and other illegal actions against the other persons. On May 22, 1991 the Special Court of the National Criminal and Correctional Appellate Court issued a joinder of the case and forwarded it to the 9th Court, where it was called "Bulacio Walter s/muerte." On May 28, said Court decided to prosecute Police Captain Miguel Ángel Espósito for the crimes of illegal denial of liberty, abuse of authority and non-fulfillment of the duties of a public official. In the course of seven months, roughly 200 persons rendered testimony and the case was kept under "secrecy of preliminary proceedings;"

7) on December 28, 1991 the applicants were given access for the first time to the testimony in the case file in the 9th Court and they requested that all the perpetrators be tried, including higher authorities than Police Captain Espósito;

8) on February 21, 1992 the Prosecutor requested that the case against Miguel Angel Espósito be "partially and definitively dismissed" regarding the death of minor Walter David Bulacio. The Prosecutor also requested "partial and provisional dismissal" of the case against Police Captain Espósito as regards illegal imprisonment. On March 20, 1992 the 9th Court ordered preventive detention of the indictee, Police Captain Miguel Ángel Espósito, for the crime of aggravated illegal imprisonment of Walter David Bulacio and others, a measure that "w[ould] not become effective in view of the fact that he has been released from prison;" it ordered an impounding; it ordered provisional dismissal of charges "with respect to the investigation of injuries followed by death of Walter David Bulacio, […] for which fact no person has been prosecuted" and it ordered provisional dismissal "with respect to the other facts [investigation regarding various allegations of injuries, threats, harsh treatment, unlawful harassment or coercion, theft or wrongful detention of property, misrepresentation of public document, requisition of means of transportation, and others mentioned by the Prosecutor [...] and inherent to the application of the applicant party], for which no person was prosecuted." In response to an appeal by the counsel of the accused, on May 19, 1992 the National Criminal and Correctional Appellate Court (hereinafter "Appellate Court") annulled preventive detention because "the considerations above impede making the accused responsible for application of an unconstitutional instrument [Memorandum 40] when [Miguel Ángel Espósito] may not have been aware of that" and "based on the fact that his behavior "was in accordance with practices customarily in force." Analysis of the file shows that according to the Report by Police Captain Miguel Ángel Espósito, the official who made the arrests, he acted unofficially applying Memorandum No. 40 of the Directorate of Judicial Affairs of the Argentine Federal Police, issued on April 19, 1965. Said Memorandum was an internal communication by an official in charge of the Judicial Directorate of the Argentine Federal Police to another official in charge of the Directorate of Security, which "left in [the] hands [of Police Captain Espósito] the decision to act without consulting any court, the action being extra-judicial;"

9) on August 28, 1992 the 9th Court decided "to provisionally dismiss in the instant preliminary proceedings [...] and set aside the prosecution of Miguel Ángel Espósito [...] with respect to the facts for which he was investigated," the latter being the "aggravated illegal imprisonment of Walter David Bulacio, now deceased, and the other persons mentioned in that decision." Both parties appealed this decision: the defense counsel requested definitive dismissal and the applicant requested annulment of the dismissal and continuation of the investigation;

10) on November 13, 1992 the VI Court of the Appellate Court decided to "make definitive the dismissal [...] definitive" with respect to Miguel Ángel Espósito in this case, which led the applicants to object to the judges and even seek a political trial against them. The former was turned down by the VI Court of the Appellate Court and the latter "up to the time [of the application being filed before the Court] no decision ha[d] been reached;"

11) in 1993, the representatives of the next of kin of Walter David Bulacio filed a civil lawsuit against the Federal Argentine Police and Police Captain Miguel Ángel Espósito for the amount of $300,000.00 (three hundred thousand pesos). This case has been suspended until rendering of the criminal judgment;

12) the applicants filed an extraordinary appeal in the criminal case, which was turned down on February 12, 1993 by the VI Court of the Appellate Court, and an appeal of complaint against refusal to accept appeal, decided by the Supreme Court of Justice of the Nation on April 5, 1994, which found it to be in order and decided that the extraordinary appeal filed was in order, and annulled the challenged decision which it considered not to be a "valid judicial act," as it lacked factual and legal grounds;

13) on July 7, 1994 the VI Court of the Appellate Court found that it "seem[ed] necessary to continue investigating the scope of the behavior attributed to the accused and it annul[led] the [provisional dismissal];"

14) "in view of the decision by the Supreme Court of Justice of the Nation", the 4th National Juvenile Court (hereinafter "the 4th Court") was designated to hear the case. On September 30, 1994 said Court ordered preventive detention of Police Captain Miguel Ángel Espósito for the crime of aggravated illegal imprisonment and set a $100,000.00 (one hundred thousand pesos) impounding. On February 7, 1995 the higher court confirmed preventive detention in response to an appeal filed by the defense counsel for Miguel Ángel Espósito. That same day, the next of kin of Walter David Bulacio supplied new evidence and requested reopening of the investigation on "injuries, unlawful coercion and torment followed by death." The Public Prosecutor's Office adhered to this request and on February 22, 1995 the 4th Court ordered that the investigation begin anew, ordering the gathering of the evidence requested;

15) on February 22, 1995 the preliminary proceedings were reopened and Fabián Rodolfo Sliwa, "a former officer who, according [to what he himself] said to the media, had witnessed the physical punishment of Walter [David] Bulacio by Police Captain Miguel Ángel Espósito," was summoned as a witness. The defense counsel for Police Captain Espósito sought, unsuccessfully, to challenge the witness and filed an objection;

16) on May 22, 1995 the defense counsel for Police Captain Espósito filed a motion for "promoción de especialidad" and requested that a trial court for adults intervene, rather than the juvenile court that had been intervening since 1991, for which reason the 4th National Juvenile Court and the 5th and 32d National Criminal Examining Courts of First Instance were disqualified;

17) on August 24, 1995 the Appellate Court decided that the 4th Court should continue to hear the case;

18) between November, 1995 and February, 1996 the 4th Court took judicial steps to corroborate what witness Sliwa had stated in his testimony. Notwithstanding the above, said Court "provisionally dismissed" in the preliminary proceedings with respect to "the fact of injuries followed by death" suffered by minor Walter David Bulacio, on March 8, 1996. No person had been prosecuted for that fact. The defense counsel for Police Captain Espósito requested "definitive dismissal," which was denied on March 19, 1996, and the "provisional

dismissal" remained in effect and the preliminary proceedings were closed regarding illegal imprisonment, for which crime pre-trial detention had been ordered;

19) the main case file was forwarded to the "W" National Trial Court (hereinafter "W Court"), where on April 18 and May 16, 1996, respectively, the prosecutor, representing a group of victims, and the representatives of the parents of Walter David Bulacio filed charges and criminal prosecution in full trial against Police Captain Espósito;

20) on June 28, 1996 the defense counsel for Police Captain Espósito filed an objection challenging the prosecutor, as well as an objection regarding lack of jurisdiction. On July 2, 1996, the W Court overruled the objection challenging the prosecutor, and on March 26, 1998 the motion of "objection regarding lack of jurisdiction" was dismissed;

21) on December 2, 1996, the W Court reopened the motion regarding "lack of jurisdiction", in which a statement was made on a "matter of law", and the Appellate Court confirmed rejection of the objection on September 22, 1998. It also ordered the trial Court to "process the main proceedings with due promptness;"

22) on October 28, 1998 the defense counsel filed an extraordinary remedy for the Supreme Court of Justice of the Nation to definitively decide the issue of competence raised in the objection. On October 30, 1998 the defense counsel itself requested temporary suspension of said remedy and filed a motion of annulment. A decision was reached on this motion of annulment on April 29, 1999 and its rejection was reconfirmed on December 16, 1999. On May 18, 1999 the Appellate Court decided that the extraordinary remedy was not in order and it returned the file to Trial Court No. 48, former W Court (hereinafter "Court No. 48);

23) on December 27, 1999 a new motion of annulment was filed. The applicant and the Public Prosecutor's Office requested that this remedy be dismissed. On March 9, 2000, Court No. 48, in turn, rejected the request for absolute annulment and for the dismissal to be declared definitive. The defense counsel appealed this decision. The Appellate Court denied the request and the defense counsel filed an extraordinary remedy for the Supreme Court of Justice of the Nation to adopt the final decision regarding annulment and dismissal. On December 7, 2000 the Appellate Court decided that the request for an extraordinary remedy was not in order;

24) on June 15, 2001, once the denial of the remedy requesting annulment had been declared final, the file returned to Court No. 48 to continue the proceedings with respect to the main case. On June 25, 2001 the defense counsel filed "objections requiring prior and special pronouncement", which are being processed, seeking that the criminal action be declared extinguished due to statute of limitations and that the lawsuit be dismissed for lack of legal standing; and

25) on November 21, 2002 the VI Court of the Appellate Court decided that criminal action was extinguished. The Prosecutor's Office appealed said decision, and at the time of the instant Judgment the parties have not informed this Court of any decision regarding the matter.

III. COMPETENCE

4. The Court is competent to hear the instant case, pursuant to Articles 62 and 63(1) of the American Convention. Argentina has been a State Party to the Convention since September 5, 1984, at which time it also accepted the obligatory jurisdiction of the Court.

IV. PROCEEDING BEFORE THE COMMISSION

5. On May 13, 1997 the Commission received an application filed by María del Carmen Verdú and Daniel A. Stragá, representing Víctor David Bulacio and Graciela Rosa Scavone, parents of the alleged victim, co-sponsored by the Coordinadora contra la Represión Policial e Institucional (hereinafter "CORREPI"), the Center for Justice and International Peace (hereinafter "CEJIL") and the Centro de Estudios Legales y Sociales (hereinafter the "CELS") (hereinafter "the applicants").

6. On May 16, 1997 the Commission forwarded to the State the relevant parts of the application and asked the State to provide the appropriate information within 90 days. The State requested three consecutive extensions, which were granted by the Commission. On December 3, 1997 the State requested that the application be declared inadmissible, due to non-exhaustion of domestic remedies and that none of the exceptions set forth in article 46(2) of the Convention had been demonstrated. The applicants replied on February 26, 1998.

7. On May 5, 1998 the Commission adopted Admissibility Report No. 29/98, during its 99th Special Session, and made itself available to the parties to attain a friendly settlement.

8. On December 18, 1998 the applicants informed the Commission that the process of negotiating a friendly settlement with the State had ended, and they requested that it continue to process the case.

9. Between March, 1999 and September, 2000 the State and the applicants sent a number of briefs regarding exhaustion of domestic remedies, as well as important complementary information pertaining to the case.

10. On October 3, 2000 the Commission adopted Report No. 72/00, during its 108th Regular Session. In said report, it concluded that Argentina violated the rights to life (Article 4), to humane treatment (Article 5), to personal liberty (Article 7), to fair trial (Article 8), of the child (Article 19), and to judicial protection (Article 25), as well as the obligation to respect human rights (Article 1), enshrined in the American Convention, to the detriment of minor Walter David Bulacio. The operative paragraphs of said report set forth that the State must:

1. Adopt such measures as may be necessary for the facts stated above not to go unpunished, including a complete, impartial and effective investigation to establish the circumstances of the detention, injuries and death of Walter David Bulacio, and punishment of those responsible in accordance with Argentine legislation.
2. Adopt such measures as may be necessary for the next of kin of Walter David Bulacio, Víctor David Bulacio and Graciela Scavone de Bulacio, to receive adequate and timely reparation for the violations [...] found.
The Commission decides to forward [the] report to the State and to grant it two months time to comply with the recommendations made. Said term will begin on the date when the [...] report is forwarded to the State, and the latter may not publish it. The Commission also decides to inform the applicants that it has adopted a report under Article 50 of the American Convention.

11. The Commission forwarded said report to the State on October 24, 2000; however, the State did not respond to the recommendations made.

V. PROCEEDING BEFORE THE COURT

12. On January 24, 2001 the Commission filed an application with the Court regarding the instant case (supra 1).

13. The Commission appointed Robert K. Goldman and Víctor Abramovich as delegates and Raquel Poitevien as legal counsel. The Commission also accredited, as assistants, Viviana Krsticevic, of CEJIL, Andrea Pochak, of CELS, and María del Carmen Verdú, of the Coordinadora contra la Represión Policial e Institucional (hereinafter "CORREPI"), who also act as representatives of the next of kin of the alleged victim.

14. On February 6, 2001 the Secretariat of the Court (hereinafter "the Secretariat"), under instructions by the President of the Court (hereinafter "the President"), pursuant to the provisions of Articles 33 and 34 of the Rules of Procedure, asked the Commission to send, within 20 days, various information and documentation, as well as certain annexes to the application that were incomplete or illegible. On February 12 and 28, 2001, the Commission sent the documents that were requested.

15. In its March 20, 2001 note, the Court notified the State of the application and its annexes and, in turn, informed the State that it had the right to appoint an ad hoc Judge to participate in hearing of the case. On April 11, 2001 the State appointed Ricardo Gil Lavedra as Judge ad hoc, and Alberto Pedro D'Alotto as agent and María Teresa Flores as alternate agent. On July 4, 2001 the State appointed, in substitution of the aforementioned persons, María Rosa Cilurzo, as agent, and Andrea G. Gualde, as alternate agent. In a brief received on March 5, 2003 the State informed the Court of the appointment of Silvia Susana Testoni as its regular agent in substitution of Mrs. Cilurzo. Finally, on July 4, 2003 Horacio Daniel Rosatti was appointed regular agent in substitution of Mrs. Testoni.

16. In its July 18, 2001 brief, the State submitted its reply to the application and the respective annexes, several of which were illegible or lacked certain parts. The Secretariat of the Court requested of the State, several times, copies of the missing or illegible sheets of the annexes of the reply to the application. On October 14, 2001 the Secretariat was able to forward to the Commission the reply to the application and its annexes.

17. On November 2, 2001 the Commission requested of the President an opportunity to submit other acts in the written proceedings, pursuant to the provisions of Article 38 of the Rules of Procedure in force. On November 8, 2001 the President granted the parties an opportunity to submit briefs of reply and rejoinder, for which it gave each of the parties one month's time. Said briefs were filed on December 7, 2001 by the Commission and on January 9, 2002 by the State.

18. On November 24, 2001 the Court asked the parties to submit their arguments regarding possible reparations, based on the principle of judicial economy and on Articles 31 and 44 of the Rules of Procedure of the Court. On December 20, 2001 the Commission requested an extension of the deadline to submit its arguments and evidence on possible reparations, in view of the situation in that country. An extension was granted until January 4, 2002 and the Commission

submitted the document on that date. The State sent its observations and evidence regarding possible reparations on February 7, 2002.

19. On January 15, 2002 the Commission, after consulting with the State, requested postponement of the public hearing, in view of the circumstances in Argentina. The following day, the Secretariat informed the parties that the President had granted that request.

20. On April 18, 2002 the Commission reported that the criminal action in which the unlawful imprisonment of Walter David Bulacio was being investigated would be extinguished on May 16 of that year. On April 22, 2002 the President asked the State for its comments on that matter and these were submitted a week later, stating that there could be no extinguishment. On June 3, 2002 the State sent a copy of the judicial action by means of which the aforementioned case was activated.

21. On June 19, 2002 the Secretariat asked the State and the Commission to send the definitive list of witnesses and expert witnesses, whose statements and expert opinions they would propose at a future public hearing on the merits and possible reparations in the instant case. In its July 3, 2002 brief, the Commission reported that steps were being taken to reach a friendly settlement. On November 20, 2002 the Secretariat once again asked the State and the Commission to send the definitive list of witnesses and expert witnesses. On November 26, 2002 the State reported that the parties were taking steps to attain a friendly settlement, and it therefore requested that the scheduled public hearing be suspended. At that same date, the President ordered the Commission to send its observations regarding the petition by the State. On December 11, 2002 the Commission stated to the Court that it did not deem it appropriate at the time to suspend the public hearing. The following day, the Secretariat reiterated its request for the definitive lists of witnesses and expert witnesses offered by the parties. On the 16th, 18th and 20th of that month, respectively, the Commission and the State submitted the information requested.

22. In his December 20, 2002 Order, the President summoned the Inter-American Commission and the State to a public hearing to be held at the seat of the Court, commencing on March 6, 2003, with the aim of hearing the testimony of the witnesses and expert witnesses offered by the parties and their final verbal arguments. The written expert opinions of expert witnesses Osvaldo Héctor Curci and Osvaldo Hugo Raffo, offered by the State, were also admitted. Finally, the parties were informed that they could submit their final written arguments.

23. On January 23, 2003 the State forwarded the sworn testimony of the two expert witnesses offered (supra 22). On February 7, the Commission sent its comments on said testimony.

24. On February 5, 2003 the State sent a copy of Decree No. 161/2003, in which the President of the Republic of Argentina ordered the Procuración del Tesoro de la Nación to reach a friendly settlement in the instant case. The following day, the Secretariat, under instructions by the President, asked the Inter-American Commission for its comments on said decree. On February 14, 2003, the Commission pointed out that, after consulting with the representatives of the next of kin of the alleged victim, the latter “mantain[ed] their position regarding the importance of the public hearing convened for March 6, 2003.”

25. On February 27, 2003 the Commission received a copy of the agreement for a friendly settlement reached on February 26, 2003 between the State, the Commission and the representatives of the next of kin of the alleged victim, in which the State recognized its international responsibility in this case. It also asked that the expert opinion of Emilio García Méndez, offered as an expert witness for the public hearing, be received in writing by means of a sworn statement. The following day, the Secretariat requested the observations of the State. On March 3, 2003 the State submitted objections to the offers of evidence made by the Commission.

26. The Court held two public hearings, at which there appeared before the Court:

For the Inter-American Commission on Human Rights:

Robert K. Goldman, delegate;
Víctor Abramovich, delegate; and
Elizabeth Abi-Mershed, legal counsel.

For the representatives of the next of kin of the alleged victim:

Andrea Pochak, representative; and
María del Carmen Verdú; representative.

For the State of the Republic of Argentina:

Silvia Susana Testoni, agent
Andrea G. Gualde, alternate agent; and
Ambassador Juan José Arcuri.

Witness proposed by the Inter-American Commission:

Graciela Rosa Scavone.

Expert witnesses proposed by the Inter-American Commission:

Sofía Tiscornia; and
Graciela Marisa Guilis.

27. As a consequence of the friendly settlement reached by the parties and acknowledgment of its international responsibility by the State, on March 6, 2003 the Court held two public hearings (supra 26). In the first of these hearings, the parties read and delivered a document clarifying the meaning and scope of the terms of the agreement (infra 33). Once said hearing concluded, the Court noted that the controversy on the merits of the facts and their legal consequences had ceased, and it issued the following Order:

1. To hear the arguments of the Inter-American Commission on Human Rights and of the State of the Republic of Argentina regarding reparations in the instant case, as well as statements

of the following witness [Graciela Rosa Scavone] and the following expert witnesses [Sofía Tiscornia and Graciela Marisa Guilis] offered by the Inter-American Commission on Human Rights[.]
[…]
2. To admit the expert opinions in writing of the expert witness offered by the Inter-American Commission on Human Rights, Emilio García Méndez, regarding legislation and domestic practices pertaining to minors and international standards applicable with respect to this matter, and of the expert witness to be designated by the State of the Republic of Argentina.
3. To order the State of the Republic of Argentina to report to the Inter-American Court of Human Rights, no later than march 13, 2003, the name of the expert witness mentioned in the previous operative paragraph.
4. To order that the expert opinions of the previous operative paragraph, rendered as written opinions, be certified by a notary public regarding contents as well as their signature.
5. To order the Inter-American Commission on Human Rights and the State of the Republic of Argentina, respectively, to take such steps as may be required to provide the written expert opinions that they offered.
6. To order the Inter-American Commission on Human Rights and the State of the Republic of Argentina to submit the expert opinions to the Inter-American Court of Human Rights no later than April 15, 2003.
7. To ask the Secretariat of the Inter-American Court of Human Rights to forward the expert opinions, once received in writing, to the Inter-American Commission on Human Rights or to the State of the Republic of Argentina, as appropriate, for them to submit whatever observations they deem pertinent within a non-extendable 30-day term from the date they receive notice.

At the start of the second hearing, the President informed the parties of the aforementioned Order and that the Court would continue with the reparations stage.

28. On March 14 of this same year the State submitted the curriculum vitae of expert witness Máximo Emiliano Sozzo, offered during the first public hearing (supra 26 and 27). Likewise, the Commission and the State submitted expert opinions on April 15, 2003, which were forwarded to the other party on April 21 and 22, respectively. The parties sent their observations thirty days later.

29. In light of the decision of the President of the Court (supra 22), the Secretariat, under instructions by the President, informed the parties on March 7, 2003 that the term for submitting final written arguments would conclude 30 days after they received the transcript of the public hearing. The latter was sent to the parties on May 30, 2003 and the final written arguments were sent by the Commission, the representatives of the next of kin of the alleged victim and the State on July 4 of the same year.

30. On July 9, 2003 the Secretariat, under instructions by the Court and pursuant to Article 44 of the Rules of Procedure, asked the representatives of the next of kin of the alleged victim and the State to send certain documents as evidence requested by the Court to facilitate adjudication of the case (infra 54 and 55). On July 16, 2003 the representatives of the next of kin of the alleged victim sent the evidence requested by the Court. On August 12, 2003 the State sent the documentation requested.

VI. ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY AND FRIENDLY SETTLEMENT

31. As is evident from the friendly settlement agreement reached by the parties on February 26, 2003 and from the March 6, 2003 explanatory document, the State acknowledged its international responsibility in the instant case (supra 27 and infra 32 and 33).

32. The friendly settlement agreement signed by the State, the Inter-American Commission on Human Rights and the representatives of the next of kin of the alleged victim on February 26, 2003 sets forth that:

In the city of Buenos Aires, on February 26, 2003, the parties in case No. 11,752, "Walter David Bulacio," being heard by the Inter-American Court of Human Rights, are present at the seat of the Bureau of Legal Affairs or "Procuración del Tesoro de la Nación." The National Government is represented by the Head of the Bureau of Legal Affairs, Dr. Rubén Miguel Citara, the Minister of Justice, Security and Human Rights, Dr. Juan José Alvarez, and the Human Rights Director of the Ministry of Foreign Affairs, International Trade and Religious Affairs, Ambassador Horacio Basabe (hereinafter THE GOVERNMENT). On behalf of the Inter-American Commission on Human Rights, Commissioner Robert Goldman sent his consent regarding the content of the agreement, and Dr. Víctor Abramovich is also present, as Delegate of the Inter-American Commission on Human Rights (hereinafter THE COMMISSION). In addition, on behalf of the family of Walter David Bulacio, Dr. María del Carmen Verdú is present as representative of the family of Walter David Bulacio (hereinafter THE REPRESENTATIVE OF THE FAMILY) and Graciela Rosa Scavone de Bulacio, the mother of Walter David Bulacio, is also present. In the framework of the friendly settlement proposed by the Inter-American Commission on Human Rights and accepted by the National Executive Branch of Government by means of Decree Nº 161 of January 31, 2003, THE GOVERNMENT, THE COMMISSION AND THE REPRESENTATIVE OF THE FAMILY agree:

1) Notwithstanding the statements and arguments made by the parties and within the ambit of the friendly settlement proposed by the Inter-American Commission on Human Rights and accepted by Presidential Decree No. 161 of January 31, 2003, THE GOVERNMENT acknowledges responsibility for the violation of the human rights of Walter David Bulacio and his family, on the basis of the application filed by the Inter-American Commission on Human Rights. In this regard it places on record that Walter David Bulacio was the victim of a violation of his rights regarding the inappropriate exercise of the duty of custody and the illegitimate imprisonment, due to non-compliance with procedures and having seen the juridical consequences and the non-renounceable commitment of the Government and State of Argentina to fully comply with human rights standards to which it has committed nationally and internationally, it acknowledges international responsibility and undertakes to carry out the corresponding reparations that will be decided by the Honorable Inter-American Court of Human Rights.

2) THE GOVERNMENT, THE COMMISSION AND THE REPRESENTATIVE OF THE FAMILY ask the Honorable Inter-American Court of Human Rights to decide on the points of law discussed in this case regarding application of Article 7 of the American Convention on

Human Rights; within the framework set forth by the Honorable Inter-American Court of Human Rights in its Advisory Opinion Nº 17.
3) Pursuant to the provisions of Article 2 of the American Convention on Human Rights, THE GOVERNMENT, THE COMMISSION AND THE REPRESENTATIVE OF [THE] FAMILY request that the Honorable Inter-American Court of Human Rights accept the establishment of consultation mechanism with the aim, as appropriate, of adjusting and modernizing domestic provisions with respect to matters pertaining to the case discussed, for which purpose experts and other civil society organizations will be summoned.
4) THE GOVERNMENT, THE COMMISSION AND THE REPRESENTATIVE OF THE FAMILY ask the Honorable Inter-American Court of Human Rights to hold the hearing on March 6, 2003 for the parties to submit their arguments and for the Honorable Court to establish the corresponding reparations, pursuant to acknowledgment of international responsibility by the Republic of Argentina in point 1 of the [...] agreement.

33. Regarding the explanatory document on the friendly settlement agreement, delegate Goldman, with the consent of the State and of the representatives of the next of kin of the alleged victim, read it at the first public hearing. Said document sets forth:

The representatives of the State of Argentina, the delegates of the Inter-American Commission on Human Rights and the representatives of the victims appear before the Honorable Inter-American Court of Human Rights to clarify the extent of clause one of the friendly settlement agreement dated February 26, 2003.
In this regard, the State acknowledges its international responsibility for violation of Articles 2, 7, 5, 19, 4, 8 and 25 of the American Convention, and therefore recognizes that it is willing to make full reparations.
The State recognizes that the arrest was illegal. This was so because it applied provisions that were later declared unconstitutional such as memorandum 40, which was contrary to international standards, and also because domestic provisions were breached that establish the obligation of police officials to notify the parents, and to inform the minors of the cause of their arrest, and for a Judge to intervene forthwith. As a consequence of the above, subparagraphs 1, 2, 3, 4 and 5 of Article 7 of the Convention were breached.
The State acknowledges responsibility for violation of the right to life and to humane treatment, under the terms of the agreement, due to inappropriate exercise of its duty of custody.
Based on the international responsibility for violations of Articles 4, 5 and 7, the State acknowledges responsibility for violation of Article 19, for not adopting protection measures required by status as a minor.
The State acknowledges violation of Articles 8 and 25. This is because, based on the specific circumstances of the case, international standards regarding reasonable terms have been surpassed and international standards regarding effective remedies have not been met.

Considerations of the Court

34. Article 52 of the Rules of Procedure of the Inter-American Court of Human Rights sets forth that:

[…]

IF THE RESPONDENT INFORMS THE COURT OF ITS ACQUIESCENCE TO THE CLAIMS OF THE PARTY THAT HAS BROUGHT THE CASE, THE COURT, AFTER HEARING THE OPINIONS OF THE OTHER PARTIES TO THE CASE WILL DECIDE WHETHER SUCH ACQUIESCENCE AND ITS JURIDICAL EFFECTS ARE ACCEPTABLE. IN THAT EVENT, THE COURT SHALL DETERMINE THE APPROPRIATE REPARATIONS AND INDEMNITIES.

35. Article 53 of the Rules of Procedure provides that:

[W]HEN THE PARTIES TO A CASE BEFORE THE COURT INFORM IT OF THE EXISTENCE OF A FRIENDLY SETTLEMENT, COMPROMISE, OR ANY OTHER OCCURRENCE LIKELY TO LEAD TO A SETTLEMENT OF THE DISPUTE, THE COURT MAY IN THAT CASE AND AFTER HEARING THE REPRESENTATIVES OF THE VICTIMS OR THEIR NEXT OF KIN, DECIDE TO DISCONTINUE THE HEARING AND STRIKE THE CASE FROM ITS LIST.

36. Article 54 of the Rules of Procedure establishes that:

[T]HE COURT, MAY NOTWITHSTANDING THE EXISTENCE OF THE CONDITIONS INDICATED IN THE PRECEDING PARAGRAPHS, AND BEARING IN MIND ITS RESPONSIBILITY TO PROTECT HUMAN RIGHTS, DECIDE TO CONTINUE THE CONSIDERATION OF A CASE.

37. The Inter-American Court acknowledges that the agreement signed by the State, the Commission and the representatives of the next of kin of the victim (hereinafter "the next of kin of the victim") is a positive contribution to the development of these proceedings and to effectiveness of the principles that inspire the American Convention on Human Rights. The Court highlights the goodwill shown by the State of Argentina before this Court, as it did previously in another case, [FN2] which demonstrates the commitment of the State to respect for and effective exercise of human rights.

[FN2] Cf., Garrido and Baigorria Case. February 2, 1996 Judgment. Series C No. 26.

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38. This Court deems that there is a basic consensus among the parties, which has led them to sign a friendly settlement agreement as well as an explanatory document regarding that agreement, so that there is no doubt regarding its scope. In light of said documents, the Court corroborates the willingness of the parties to end the controversy with respect to the merits of the matter. In view of the above, and as the Court had set forth in its March 6, 2003 Order, the controversy between the State and the Commission has ceased regarding the facts that gave rise to the instant case. [FN3] In light of the friendly settlement agreement signed by the parties and its explanatory document, and of the evidence supplied by them, the Court finds that the State violated, as it has acknowledged:

a. The right to personal liberty, enshrined in Article 7 of the American Convention, to the detriment of Walter David Bulacio, who was illegally and arbitrarily detained by the police during a razzia operation without a court order, and by not having informed him of his rights as a detainee, nor having promptly notified his parents and the Juvenile Judge regarding his detention.
b. The right to humane treatment, protected by Article 5 of the American Convention, to the detriment of Walter David Bulacio, who was beaten by police agents and subjected to mistreatment, as stated in the application (supra 3).
c. The right to life, enshrined in Article 4 of the American Convention, to the detriment of Walter David Bulacio, as the State, which was in the position of guarantor, did not "appropriately exercise the duty of custody."
d. The right to judicial protection and to fair trial, set forth in Articles 8 and 25 of the American Convention, to the detriment of Walter David Bulacio, for not having notified the Juvenile Judge immediately after his detention. It also denied those same rights to the next of kin of Walter David Bulacio by not providing them with effective judicial remedy to clarify the causes of the detention and death of Walter David, punishing those responsible and making reparations for the damage caused.
e. The right to special protection measures in favor of minors, enshrined in Article 19 of the American Convention, which were not adopted in favor of Walter David Bulacio, as a minor.
f. The general obligations of the State, set forth in Articles 1(1) and y 2 of the American Convention, regarding the rights breached to the detriment of Walter David Bulacio as well as his next of kin.

[FN3] Cf., Barrios Altos Case. March 14, 2001 Judgment. Series C No. 75, para. 38; Trujillo Oroza Case. January 26, 2000 Judgment. Series C No. 64, para. 40; El Caracazo Case. November 11, 1999 Judgment. Series C No. 58, para. 41; Benavides Cevallos Case. June 19, 1998 Judgment. Series C No. 38, para. 42; Garrido and Baigorria Case, supra note 2, para. 27; El Amparo Case. January 18, 1995 Judgment. Series C No. 19, para. 20; and Aloeboetoe et al. Case. December 4, 1991 Judgment. Series C No. 11, para. 23.

VII. EVIDENCE REGARDING REPARATIONS

39. Before examining the evidence received, in light of the provisions set forth in Articles 43 and 44 of the Rules of Procedure, the Court will state a number of points applicable to the specific case, most of which have been developed in the case law of this Court.

40. The principle of the presence of both parties to an action, which establishes respect for the parties' right to defense, is applicable in probatory matters. This principle's importance is based on Article 43 of the Rules of Procedure. The latter refers to the time when evidence must be offered, for equality among the parties to prevail. [FN4]

[FN4] Cf., Juan Humberto Sánchez Case. June 7, 2003 Judgment. Series C No. 99, para. 28; "Five Pensioners" Case. February 28, 2003 Judgment. Series C No. 98, para. 64; Juridical status

and human rights of the child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 132-133; and Mayagna (Sumo) Awas Tingni Community Case. August 31, 2001 Judgment. Series C No. 79, para. 86.

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41. In accordance with the usual practice of the Court, at the start of each procedural stage the parties must state, at the first opportunity granted them to do so in writing, what evidence they will offer. The Court, exercising its discretionary authority under Article 44 of its Rules of Procedure, may ask the parties to supply additional probatory elements, as evidence to facilitate adjudication of the case, without this constituting a new opportunity to expand or complement their arguments or to offer new evidence, unless the Court decides to allow this. [FN5]

[FN5] Cf., Juan Humberto Sánchez Case, supra note 4, para. 29; Las Palmeras Case. Reparations (Art. 63(1) American Convention on Human Rights). November 26, 2002 Judgment. Series C No. 96, para. 17; El Caracazo Case. Reparations (Art. 63(1) American Convention on Human Rights). August 29, 2002 Judgment. Series C No. 95, para. 37; and Hilaire, Constantine and Benjamin et al. Case. June 21, 2002 Judgment. Series C No. 94, para. 64.

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42. The Court has also pointed out before, regarding receival and assessment of evidence, that the proceedings before this Court are not subject to the same formalities required in domestic judicial actions and that admission of items into evidence must be done paying special attention to the circumstances of the specific case, and bearing in mind the limits set by respect for legal certainty and procedural balance among the parties. [FN6] The Court has also taken into account international case law, as it deems that international courts have the authority to appraise and assess evidence based on the rules of competent analysis, and has always avoided rigidly setting the quantum of evidence required to reach a decision. [FN7] This criterion is especially valid with respect to international human rights courts, which enjoy substantial flexibility in the assessment of evidence submitted to them regarding the respective facts, to establish the international responsibility of a State, in accordance with the rules of logic and based on experience. [FN8]

[FN6] Cf., Juan Humberto Sánchez Case, supra note 4, para. 30; “Five Pensioners” Case, supra note 4, para. 65; and Cantos Case. November 28, 2002 Judgment. Series C No. 97, para. 27.
[FN7] Cf., Juan Humberto Sánchez Case, supra note 4, para. 30; “Five Pensioners” Case, supra note 4, para. 65; and Cantos Case, supra note 6, para. 27.
[FN8] Cf., Juan Humberto Sánchez Case, supra note 4, para. 30; “Five Pensioners” Case, supra note 4, para. 65; and Cantos Case, supra note 6, para. 27.

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43. Based on the above, the Court will now examine and assess the body of evidence in the instant case, following the rules of competent analysis and within the applicable legal framework.

A) DOCUMENTARY EVIDENCE

44. When it filed its application, the Commission included as evidence 32 annexes with that same number of documents (supra 1 y 12). [FN9]

[FN9] Cf., Annexes 1 to 32 of the application brief filed before the Inter-American Commission on January 24, 2001 are fastened with rings in separate volumes of the main file at the Secretariat of the Court.

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45. The State attached two annexes to its brief replying to the application (supra 16), which were the complete records of two cases processed under domestic jurisdiction. [FN10] On September 20, 2001 the State also submitted a certified document issued by the court intervening in the domestic criminal case, stating that it did not have better copies of the records contributed as annexes in the reply to the application. [FN11]

[FN10] Cf., volumes 1 to 14 of case file No. 2,018 entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", fastened with rings in separate volumes of the main file at the Secretariat of the Court, with 2717 sheets; and single volume of the "incidente de nulidad en trámite ante el Juzgado Nacional de Primera Instancia en lo Criminal de Instrucción nº 48, Secretaría de Sentencia nº 206 (Ex Juzgado de Sentencia letra W)," fastened with rings in a separate volume of the main file located at the Secretariat of the Court, with 164 sheets.

[FN11] Cf., Sheet 293 of the main file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo II".

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46. In its reply (supra 17), the Commission submitted two annexes with that same number of documents. [FN12]

[FN12] Cf., Annexes 1 and 2 of the rejoinder filed by the Commission on July 18, 2001, sheets 345 and 346 of the main file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo II".

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47. The State attached four annexes to its April 29, 2002 brief, and these were four case records of domestic proceedings, and made observations on extinguishment of the domestic criminal case mentioned by the Commission (supra 20). [FN13]

[FN13] Cf., Sheets 2718 to 2901 of case No. 2,018 entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", fastened with rings in separate volumes of the main file at the Secretariat of the Court; sheets 1 to 116 of the motion on extinguishment of

criminal action, fastened with rings in separate volumes of the main file at the Secretariat of the Court; sheets 407 to 747 of the motion on prior decision on lack of action tabled by the defense counsel, fastened with rings in separate volumes of the main file at the Secretariat of the Court; sheets 307 to 382 of the testimony in the appeal to the Prosecutor, sheets 14/15 against the writ in sheet 12 (of the sheets with motions), fastened with rings in separate volumes of the main file at the Secretariat of the Court; and sheets 1 to 25, fastened with rings in separate volumes of the main file at the Secretariat of the Court.

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48. On June 3, 2002 the State forwarded a copy of a note sent by the Human Rights Secretary of the Nation's Ministry of Justice and Human Rights, informing the Bureau of Legal Affairs or "Procuración del Tesoro de la Nación" of the legal acts carried out by the judge intervening in the case under domestic jurisdiction (supra 20). [FN14]

[FN14] Cf., Sheets 482 to 487 of the main file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo II".

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49. Once authorized by the President of the Court (supra 22), the State submitted the written statements of expert witnesses Osvaldo Héctor Curci and Osvaldo Hugo Raffo. [FN15]

[FN15] Cf., Sheets 677 to 688 of the main file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo III".

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50. In its brief on reparations (supra 18), the Commission submitted four annexes with that same number of documents. [FN16] The State, in turn, included three annexes, with that same number of documents, [FN17] in its brief with observations on the reparations (supra 18).

[FN16] Cf., Annexes 1 to 4 of the brief on reparations filed by the Commission on July 18, 2001, sheets 25 to 29 of the main file on reparations at the Secretariat of the Court entitled "Caso Bulacio. Reparaciones. Tomo I".

[FN17] Cf., Annexes 1 and 2 of the brief on reparations filed by the State on February 7, 2002, sheets 71 to 96 of the main file on reparations at the Secretariat of the Court entitled "Caso Bulacio. Reparaciones. Tomo I".

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51. On February 11, 2002 the Commission submitted three documents pertaining to the marriage certificate of the parents of Walter David Bulacio and the powers of attorney of the representatives of Lorena Beatriz Bulacio and María Ramona Armas de Bulacio. [FN18]

[FN18] Cf., Sheets 123 to 127 of the main file on reparations at the Secretariat of the Court entitled “Caso Bulacio. Reparaciones. Tomo I”.

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52. On March 6, 2003, during the final arguments of the parties at the second public hearing (supra 26 and 27), the representatives of the next of kin of the victim submitted seven documents. [FN19]

[FN19] Cf., Sheets 769 to 773 of the main file on the merits at the Secretariat of the Court entitled “Caso Bulacio. Fondo. Tomo III”.

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53. The Commission and the State also submitted, respectively, the sworn statements of expert witnesses Emilio García Méndez and Máximo Emiliano Sozzo, both rendered in writing before a notary public (supra 28), in accordance with the March 6, 2003 Order of the Court (supra 27). [FN20] Said statements are summarized as follows:

[FN20] Cf., Sheets 801 to 807 and 815 to 831 of the main file on the merits at the Secretariat of the Court entitled “Caso Bulacio. Fondo. Tomo IV”.

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a) Expert opinion of Emilio García Méndez, Doctor in Law, attorney, expert in legislation on children and adolescents

The intensity and frequency of police abuse continues to be a matter of concern in Latin America. It is reasonable to propose the hypothesis that there is a strong causal relationship between frequency and intensity of police abuse and arbitrary detentions, and between the latter, in turn, and the concept of “protection,” as it appears in the “minor-oriented” juridical culture.
With respect to arbitrary police arrests in Argentina, there would seem to be a strict and restrictive criterion for adults and a much more lax and discretionary one for minors.
For almost 70 years, from 1919 until the adoption and ratification of the Convention on the Rights of the Child in 1989, arbitrary detentions of minors were not only a customary practice, but they also coexisted peacefully with legal doctrine and legislation in force.
The 1989 Convention on the Rights of the Child has paradoxically made it possible to understand the flagrantly unconstitutional nature of all the legal support for “protection-repression” of poor children in Argentina. In this regard, the basis for organization of the policy of social assistance to poor children and rebellious and marginalized adolescents was a systematic violation of the most basic constitutional provisions.
For a police detention to be in accordance with international human rights standards, the grounds for imprisonment of a person (whether adult or minor) must be previously set forth formally in a law, obviously in accordance with the National Constitution. [FN21] Secondly, the procedures for detention must be objectively defined by law. Third, even if police detentions are in accordance with what is set forth in the law, they cannot be arbitrary, that is, they must be reasonable, foreseeable, and proportional to the specific case. Unrestricted respect for the right to

fair trial of every person arrested must also be ensured. In the case of minors, it is furthermore indispensable for the family to be informed immediately or as soon as possible of the measure and of the reasons for the measure, as an essential safeguard for protection of their rights.
The main obstacles for respect of the human rights of children are not due only to ambiguous and defective juridical techniques but rather, mainly, to a stereotyped juridical culture regarding the meaning and scope of due protection to individuals whose vulnerability has, to a large extent, been artificially constructed.
Several elements make the Bulacio Case emblematic. First of all, existence of effective regulations, including Memorandum No. 40, that violate the National Constitution and international human rights treaties. Furthermore, persistence of a more or less systematic policy of razzias, accepted, especially with respect to youths, as a form of special prevention. In addition, there were high levels of impunity of criminal police actions, especially with respect to minors. Finally, in the Bulacio case a decisive aspect was the persistence of a culture of "protection" which does not wish to, cannot, or does not know how to protect vulnerable sectors, other than by setting aside or weakening their rights and guarantees.
Finally, an adequate interpretation of the guarantees set forth in the American Convention for adults and minors is indispensable, in consonance with the conclusions of Advisory Opinion OC-17/02, Legal Status and Human Rights of the Child, issued by the Inter-American Court as orientation to channel State activity in terms of strict respect for human rights of all persons.

[FN21] As, for example, Article 18 of the Constitution of Argentina.
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b) Expert opinion of Máximo Emiliano Sozzo, attorney at law.

The Republic of Argentina has a federal political system in which a National State and 23 Provincial States coexist. Policies regarding crime are developed at both levels, with differing competences for each.
Through a 1994 Constitutional Reform, the city of Buenos Aires obtained the status of "autonomous government." Nevertheless, said constitutional change did not bring with it the immediate establishment of criminal system institutions of the type that exist in the other Provincial States –police, criminal justice, enforcement of criminal judgment-.
During the period from 1991 to 2003, the crime control policy in the city of Buenos Aires was largely designed and implemented by the National State –with various exception-. In that same period, the police institution in this city has been the Argentine Federal Police. Since the establishment of the Federal Capital Police –its predecessor- it developed intervention techniques aimed at "crime prevention," which have traditionally been grounded on legal instruments and regulations and shaped by cultural implementation of positivist criminology. These techniques include police presence and surveillance in public spaces and police detention of individuals without a court order. In the framework of the latter technique of police intervention, one can in turn highlight police detention of individuals without a court order, supported by police edicts.
As an institution, the police force, especially in the case of the Argentine Federal Police, was a complex organization with high levels of autonomy with respect to national and provincial governments. It was not until the 1990s that various attempts were made to have an impact on

Argentine police institutions, seeking to address their traditional autonomy and modifying police regulations, organization, and culture.

"Detention to verify criminal record" was regulated until 1991, under federal jurisdiction, by Decree-Law No. 333/58, ratified by Law No. 14467 –the Organizational Law of the Argentine Federal Police-. The former authorized police officers to "detain, for purposes of identification under circumstances that justify the detention and for no longer than 24 hours, any person whose criminal record it is necessary to verify." In 1991, the National Congress amended this organic law by means of Law No. 23,950. This law modified the purpose of the detention, which would not seek to check the person's "criminal record" but rather to "verify identity." "Detention to verify identity" has as a conditio sine qua non that the person does not "convincingly prove his or her identity," and this sought to limit the cases in which imprisonment was in order. It was also necessary, pursuant to this law, for there to "be well-founded circumstances that lead to the presumption that someone has committed or might commit a criminal act or misdemeanor." What is intended is for detention to take place when there is a well-founded presumption that a person has committed a crime or misdemeanor, and this must be based on objective criteria. However, "detention to verify identity" in the new legal text is also in order when there is a well-founded presumption that a person might in the future commit a crime or misdemeanor, which is the traditional generic police function of preventing crimes, one that is entirely subjective.

The legal amendment also established that detention time must be the "minimum required to ascertain identity," and no longer than 10 hours. On the other hand, the new legal text granted the person detained to verify his or her identity the right to communicate immediately with a relative or person he or she trusts so as to inform them of his or her situation." In this manner, the law seeks to ensure "transparency" of the police procedure. Finally, the new legal text imposes upon intervening police officials the obligation to "notify the competent correctional Judge on duty." One observes the intention of generating a judicial control mechanism regarding the use of this police authority.

Since 1870, the Head of the Police of the Province of Buenos Aires –later on the Argentine Federal Police- drafted the police edicts, which are normative instruments specifying prohibitions and misdemeanor sanctions. The definitions of misdemeanors were stated arbitrarily, in vague and ambiguous terms, often describing typical personal traits of certain groups of persons –based on their sexual preference, social condition, or age- rather than behaviors. Offenders were apprehended, processed and convicted by police authority, without the intervention of a judicial institution. While there was the legal possibility of appealing to judicial control with respect to the police proceeding, the minimal time allowed to do so made it practically impossible. This police proceeding did not ensure the right to defense or minimum guarantees of due process. Punishment imposed could be a fine or arrest, not to exceed eight days. With the adoption of the 1889 Criminal Proceeding Code, that maximum increased to 30 days.

This normative structure was in operation until March 1998, by means of police edicts and the Rules of Procedure for Misdemeanor Proceedings issued by the Commander of the Federal Police.

After the 1994 amendment to the National Constitution and the adoption of the 1996 Constitution of the City of Buenos Aires, a scenario was established in which the political and juridical debate on the need to abolish the system of police edits took place.

In March 1998, the Code of Harmonious Urban Relations or "Código de Convivencia Urbana" of the City of Buenos Aires was unanimously adopted, as a legal instrument respectful of the

principles of the Rule of Law, regulating behaviors that damage various juridical rights or place them at risk. The definitions of misdemeanors in this legal instrument, contrary to those contained in the police edicts, reflected a clear orientation toward the "act" rather than the "actor," with a strongly "objectivizing" content regarding the offenses. As regards punishment, imprisonment is exceptional as a means to punish for misdemeanors. On the other hand, in that same month of March 1998, the legislative assembly of the city of Buenos Aires adopted the Law on Misdemeanor Proceedings, which completed the process of judicializing matters pertaining to misdemeanors. The police ceased to play its double role as "legislator" and "judge" regarding misdemeanors, and the possibility of police officers detaining persons outside the control of prosecutors was eliminated. Furthermore, the detainee must be "informed of the causes for his or her apprehension, of the charges against him or her, of the intervening judge and prosecutor, and of his or her rights."

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54. On July 16, 2003 the representatives of the next of kin of the victim submitted the evidence requested by the Court to facilitate adjudication of the case (supra 30). [FN22]

[FN22] Cf., Sheets 1017 to 1024 of the main file on the merits at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo V".

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55. On August 12, 2003 the State submitted the documents requested by the Court as evidence to facilitate adjudication of the case (supra 30). [FN23]

[FN23] Cf., Sheets 1033 to 1180 of the main file on the merits at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo V".

B) TESTIMONAL AND EXPERT EVIDENCE

56. On March 6, 2003 the Court heard the statement of the witness and the expert opinions of the expert witnesses offered by the Inter-American Commission. The Court summarizes the significant parts of said statements as follows:

a) Testimony of Graciela Rosa Scavone, mother of the victim

At the time of the events, Walter David Bulacio was 17 years old and was finishing secondary school. He was a good student and planned to study law and specialize in diplomacy. He also worked half time as a caddie at a golf field. His income depended on what his clients gave him; however, "it could be up to 20 pesos" daily, which he used, in part, to support his family.
The members of the family group were Víctor David Bulacio, Walter David's father; the witness, Walter David's mother; Lorena Beatriz Bulacio, Walter David's sister; and Walter David Bulacio. They constituted a normal family. Both parents worked and supported the household.

Walter David left on Friday, April 19, 1991 about 8:00 p.m., for a concert. He told his mother that this type of concerts usually finished late and if that happened he would not come home that night, but go directly to work. He told her not to worry and that the next day, about 6:00 p.m., he would come home.

That Saturday she noticed that Walter David had not spent the night at home. The witness did her household chores. About 3:00 or 4:00 p.m. a boy came and said that Walter David had been arrested and they should go look for him. She went for her husband at work and from there they went to the police station, where they were told that Walter David was somewhere else. Finally, they found him at 11:00 p. m. or 12:00 p.m. of that same day, hospitalized.

Walter David's body is buried in a private cemetery; at first, it was in a public one.

After her brother's death, Lorena Beatriz Bulacio had many health problems. She suffered severe depression, then suffered bulimia and had to be hospitalized several times to save her life. She is currently 26 years old and is a young woman who "never goes outside her house."

Víctor David Bulacio, Walter's father, was hardworking and contributed to the family financially. When the events took place, he went crazy and his life fell apart: he began to be absent from work, until his employers fired him, for which reason he did temporary jobs; he began to take drugs and left the household. He would not see his daughter Lorena Beatriz, because he said that it caused him great pain to see her and the witness, and that "he could not bear it."

Víctor David Bulacio also had temporary relations with other persons. As a result of one of those relations, he had two children: Matías Emanuel Bulacio and Tamara Florencia Bulacio, whom he and his new couple abandoned. Under those circumstances, Tamara Florencia, who was two and a half, was taken to live with Víctor David Bulacio's mother and Matías Emanuel, who was a year and a half, was taken in by Lorena Beatriz Bulacio and the witness. These children remained "NN" for several years; before he died, Víctor David Bulacio requested recognition of his paternity of them. They then began to process the documents. Currently, Tamara Florencia and Matías Emanuel are in the process of being adopted, respectively, by the grandmother on their father's side and by the witness, because the mother never returned. Now her mother-in-law and the witness are the legal representatives, respectively, of Matías Emanuel and Tamara Florencia.

Víctor David Bulacio suffered two heart attacks and had to undergo what seemed like a simple operation, after which he died. The physician himself explained to the witness that "her husband simply did not want to continue living. This happened a few days before the ninth anniversary of the death of Walter" David.

For María Ramona Armas de Bulacio, Walter David's grandmother, he was her favorite grandchild and she suffered very much with his death. She represented the witness when she felt that she could not continue living, for example, participating in demonstrations.

The family fell apart after what happened to Walter David: some of the bothers and sisters of the witness died as a consequence of patterns of depression, and her brothers-in-law also suffered health problems; one of Víctor David Bulacio's sisters suffered a brain embolism shortly after Walter David's demise.

The response of the State, over all these years, was to "question the morality of the family." They questioned what type of people the members of the family were and what type of person Walter David was: a criminal, a homosexual, a drug addict. She suffered these accusations regarding Walter David by a State attorney during a hearing at a courtroom.

She regrets very much having had to come before the Court, as she would have preferred if things had been solved in her country. She asked the Court, insofar as possible, to do something so that what happened to her son will not happen to any other youth. All she wants is "justice, nothing more."

b) Expert opinion of Graciela Marisa Guilis, a psychologist, Coordinator of the mental health team and a member of the Mental Health Team of the Centro de Estudios Legales y Sociales on torture during the dictatorship.

The expert witness referred to the impact of the events suffered by Walter David Bulacio on the household. At the time of the facts, Walter's family had a traditional structure. His death caused a disruption which established "a before and an after in the form of existence of this family." When someone loses a spouse, he is called a widower; when someone loses a father or a mother, he is called an orphan, but there are no names, in any language, to call someone who suffers the death of a child. Only in Hebrew is there a term that characterizes this situation, and that is "chacol", the closest translation of which is the idea of a dejectedness of the soul. This is the only name given to a father or mother regarding the death of a child, and this is the catastrophic dimension of Walter David's death for his parents.

There is clearly mourning in the case of parents regarding the death of their children, but the component of State intervention, in this case, affected the type of mourning and the situation of the family. The State is supposed to be a guarantor, or a third party to whom one can appeal in the "social contract between the citizens and State institutions." In face of an intrusion by the State, the family's subjectivity is affected, that is, their life projects and, ultimately, their sense of belonging to that social space is affected, with the attendant psychological damage. This is why "only the State can return justice [and] a place in society to these next of kin," by answering basic questions which any relative asks in a normal grieving process, such as: "how did it happen?," "who was responsible?," "under what circumstances did it occur?" Otherwise, the next of kin take upon themselves a feeling of guilt regarding the death of their beloved one. With respect to Walter David's image, the family also endured suspicions that because he was an adolescent he was involved in alcoholism, drug addition or altered sexual behavior, allegations that were ultimately disproven.

According to the expert witness, she observed various effects in all members of the family, both in their bodies and in their psyche. Since 1996, due to obstruction of the investigation of what happened and lack of a judgment, all indicators and signs shown by the members of the household grew dramatically and their pathologies worsened. Furthermore, loss of their jobs was due to "the subjective conditions they were undergoing and [...] the burden this meant in their existence."

With respect to Lorena Beatriz Bulacio, Walter David Bulacio's sister, the expert witness pointed out that she was 14 at the time her brother died. The next year, Lorena Beatriz suffered a serious pattern of bulimia that persisted throughout almost all her adolescence; beginning in 1996, at age 19, she attempted suicide twice and was hospitalized for extended periods in neuropsychiatric centers. During the interviews with Lorena Beatriz, she stated that what kept her alive was for her "mother not to lose another child," and at the same time she was afraid that someone might die, and therefore she preferred to die. Furthermore, her parents were so depressed that when they returned from work she had to care for them until the next day, when they went back to work, and thus every day. With respect to her father, Lorena Beatriz stated that

he could not decide anything in his life, and even less so with respect to her two little siblings, for which reason she also had to take over the responsibility for them. Walter David was always a model or reference point for Lorena Beatriz. Currently, Lorena Beatriz is at a point of the utmost concern, as she is a woman who "at age 27" has not been able to go outside her house again, to establish emotional ties with another person, to study or work, and she has become "like a housekeeper [...] for her own family. She is the custodian of family life, to ensure that no one else dies or is depressed."

With respect to Víctor David Bulacio, the expert witness pointed out that his death coincided, nine years later, with the month that Walter David had died. During that period, he went through various situations "like going into and out of [...] depressive patterns which he attempted to overcome, to continue with the demand for justice for his son's death." He stopped working. Since 1996, he began to suffer more protracted periods of depression, lost his job, became careless about his personal hygiene, and was uninterested in life. He attempted suicide three times, one of them swallowing ground glass. Finally, Víctor David Bulacio suffered a heart condition that caused his death.

With respect to María Ramona Armas de Bulacio, Walter David's grandmother, the expert witness stated that she was a very active participant in the demand for justice and truth regarding her grandson's death. During several periods "she was the public face of this struggle," which was not enough to avoid certain effects on her body: since 1996, she underwent seven operations and suffered a hiatus hernia, duodenal cancer and metastasis in the stomach. Any family has expectations regarding the future of its members; in the case of the grandmother, she idealized Walter David's image very much.

With respect to Walter David, the expert witness stated that it has been "demonstrated by his school reports and by his friends, classmates and group members, [that he was] an excellent student." This youth had projects, as any adolescent does. He planned to study law at the university; he worked and he contributed to his family financially. He was the first-born son, and as such, there were many expectations about him; he symbolized "continuity [of the parents] in life."

The next of kin interviewed insisted on their pressing need to "close a process that has gone beyond the limits of mourning, even pathological."

c) Expert opinion of Sofía Tiscornia, anthropologist, Director of the Political Anthropology and Institutional Violence Program of the Social Anthropology Section of the School of Philosophy and Arts of the University of Buenos Aires, and Director of the Study and Research Institute of the Ombudsperson's Office of the City of Buenos Aires.

The usual practice for detention of individuals by the police in Argentina, especially in the city of Buenos Aires, is the so-called "razzias", "detentions to verify criminal records," which then became "detentions to verify identity," as well as "detentions based on police edicts on misdemeanors or police codes on minor offenses."

The term razzia means "a military incursion, a violent surprise attack on foreign territory" with the aim of despoiling; it comes from Algerian Arabic, and entered the French language in 1840, when France began its colonial campaign in Algeria. Currently the term razzia is applied to surprise police operations the objective of which is to surround a property, a town, a street, a rock concert, a neighborhood; to restrict the movements of those caught within this encircling action, forcing them to get onto police vehicles or collective public transportation and take them

to police territory, generally to police stations. Razzias can be directed toward population groups regardless of their sex, age, or occupation, or toward sects, youths, or sexual minorities. In the specific case of Argentina, the sectors affected most by this type of "razzias" are the younger, poor and working-class sectors. During these procedures, "[individuals] are dispossessed of their fundamental rights" and, therefore, there is a process of dehumanization, where the police "demand obedience, unlimited compliance with orders and yelling [...], submission and subservience."

In these police procedures there are several inconvenient aspects, including the fact that judicial control is usually belated or even non-existent. In the case of detentions to verify identities, the police generally submit to the judge, belatedly, a list of persons detained, stating as causes for detention: "loitering," "wandering aimlessly," "window watching;" and the time of entry and release of the detainees at the police station is not always stated, nor is their domicile. The judges conduct an "almost administrative" control of police detention, as this function has been entrusted to the correctional judges, who have the largest number of ongoing cases and the least structure within the Argentine Judiciary, for which reason it is utterly impossible to effectively control roughly 100,000 to 150,000 monthly detentions in the city of Buenos Aires. On the rare occasions when a judge has effectively controlled said detentions, the Office of the General Director of Police Stations of the Federal Police orders that "once a detention takes place, the detainee should be informed of his or her rights [...] and the judge should be informed immediately," with which the number of detentions declines.

There is no direct relationship between these practices and effectiveness of protection of citizen security. The police arrest large numbers of persons jointly or individually, and it is only at the police station that they are "classified" as adults, youths, women, men. Said massive detentions take place under the a priori definition that there are certain persons who, according to the social defense program, per se may commit crimes. However, according to investigations carried out only 0.2% of the persons detained through these practices have arrest warrants.

Three main reasons give rise to these police practices: first, "repressive and disciplinary control of population groups," with the aim of setting an example for poor, working-class and youth sectors, under the ideology of a dangerous state without crime; second, these detentions are part of bureaucratic police work with the dual aim of showing supervisors that they are working, and of responding to pressure by the media or by certain sectors demanding greater security; and third, they exercise control that allows them to establish minor unlawful activities, peddling, prostitution and other occupations of the poor, and also to charge fees in exchange for permits to practice those occupations, thus contributing to the so-called "petty cash" of the police force.

With respect to the institutional framework and the rules governing these practices, the police as an institution have a number of legal definitions: detention to verify identity, police edicts on misdemeanors and resistance to authority. Based on the behavior of the detainees, the police would fit that detention within one of the legal definitions set forth; in the case of a child, they applied Memorandum 40. Memorandum 40 was a secret communication between correctional judges and the federal police. Its aim was to register minors detained by the police in those actions: massive and widespread detention. Detention based on Memorandum 40 continued, at the police station, by separating minors and adults. Some children were brought before the Juvenile Judge, while others were simply placed in custody or registered, then delivered or not to their parents. The aforementioned legal definitions "somehow were the grounds for a basically illegal police practice."

The Bulacio Case has been "emblematic and [...] paradigmatic" in Argentina, primarily because Walter David Bulacio, who was detained at a rock concert, was part of the younger generation of the democratic '90s and this caused "a type of strong identification effect." Given what happened to Walter David Bulacio, most Argentinean youths "felt that their image was reflected in [him]," as "what happened to Walter [David] Bulacio [...] could have happened to any [Argentine] youth [of his age]." Furthermore, a social movement of youths who are now thirty years old followed this case actively, which shows its generational continuity, expressed through student demonstrations, videos, movies, publications, and lectures.
As regards measures of reparation, she stated that it is important to maintain and expand remembrance of this case, which in any case already exists among a part of the population.

C) EVIDENCE ASSESSMENT

Assessment of the Documentary Evidence

57. In this case, as in others, [FN24] the Court recognizes the probatory value of the documents submitted by the parties at the appropriate procedural moment or as evidence to facilitate the adjudication of the case, which was not disputed nor challenged, and whose authenticity was not questioned. On the other hand, pursuant to Article 43 of the Rules of Procedure, the Court admits the evidence submitted by the parties with respect to the supervening events that happened after the application was filed.

[FN24] Cf., Juan Humberto Sánchez Case, supra note 4, para. 45; "Five Pensioners" Case, supra note 4, para. 84; and Cantos Case, supra note 6, para. 41.

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58. Pursuant to Article 44 of the Rules of Procedure, the Court includes the documents supplied during the public hearing held in the instant case -both the copies of the national identification documents and the birth certificates and provisional custody certificates of Matías Emanuel and Tamara Florencia Bulacio- in the body of evidence to facilitate adjudication of the case.

59. Once authorized by the President, the State submitted the expert opinions of expert witnesses Osvaldo Hugo Raffo and Osvaldo Héctor Curci (supra 22 and 49). Within the time allotted for this, the Inter-American Commission submitted its observations on the expert opinions of said expert witnesses. This Court notes that the statements of said expert witnesses sought to disprove certain facts regarding the merits of the case. Because of the international responsibility accepted by the State (supra 25, 27 and 31-38), the Court will not consider these statements within the body of evidence.

60. After the Commission submitted the expert opinion of Emilio García Méndez, pursuant to the March 6, 2003 Order of the Court (supra 27 and 28), the State filed its observations, within the time allowed for this purpose (supra 27 and 28), and pointed out that it deemed that the presentation of the facts and conclusions of the expert opinion are "based on dogmatic statements." In this regard, the State argued that:

a) the deductions made by the expert witness regarding the link between abuse in police practices and the phenomenology of said practices based on the Bulacio Case are hypothetical; and
b) the expert witness seems to "ignore" the steps taken by Argentina to comply with its international commitments regarding this matter, both before and after the facts in the Bulacio case.

61. Likewise, after the State submitted expert opinion Máximo Emiliano Sozza, within the time allowed for this purpose (supra 27 and 28), the Commission stated that it "agree[d] with the historical, juridical and sociological analysis by the expert witness [...], however, it consider[ed] his answers to be at least 'incomplete'." In this regard, the Commission stated that:

a) even though there have been legislative changes in the city of Buenos Aires regarding detentions to check police records and in the police edict system, the expert opinion omitted the fact that in most Argentine provinces this type of "arbitrary detentions" continues to be practiced;
b) likewise, the expert opinion does not state that the legislative changes that took place in the city of Buenos Aires only involved modification of the terms, but not of the powers granted to the police, a fact that has even been stated by expert witness Sozzo in other publications of his;
c) the expert opinion does not mention the impact of the Bulacio Case on the changes that he considers positive, which were in response to pressure by the citizenry due to the impact of this case; and
d) in conclusion, "there is no substantial disagreement between the position of the Argentine State and the position of the Inter-American Commission and the representatives of the Bulacio family;" however, the legislative amendments discussed "are not sufficient to avoid recidivism of cases such as that of Walter David Bulacio."

62. The Court has ascertained that the expert opinions of expert witnesses Máximo Emiliano Sozzo and Emilio García Méndez were contributed to the proceedings by means of the brief. The parties had a procedural opportunity to submit observations on the expert opinion offered by the counterpart, thus respecting the principle of the presence of both parties. [FN25] Regarding these expert opinions, in accordance with the request by the parties (supra 27), the Court applied its discretionary criterion to allow submission of statements or declarations in writing. As it has done previously, [FN26] the Court will not consider this procedural item to be full evidence but will, instead, assess its content within the context of the body of evidence and applying the rules of competent analysis. [FN27]

[FN25] Cf., Juridical status and human rights of the child, supra note 4, paras. 132-133.
[FN26] Cf., Las Palmeras Case, Reparations, supra note 5, para. 130; El Caracazo Case, Reparations, supra note 5, para. 60; and Castillo Páez Case. Reparations (Art. 63(1) American Convention on Human Rights). November 27,1998 Judgment. Series C No. 43, para. 40.
[FN27] Cf., Juan Humberto Sánchez Case, supra note 4, para. 55; El Caracazo Case, Reparations, supra note 5, para. 60; and Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 69.

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63. With respect to the newspaper clippings, this Court deems that even though they are not documentary evidence proper, they may be assessed when they reflect publicly-known or notorious facts, statements of officials of the State, or when they corroborate what is set forth in other documents or testimony received during the proceedings. [FN28] Thus, the Court includes them in the body of evidence as a means to establish the consequences of the facts of the case together with other evidence supplied, insofar as they are relevant.

[FN28] Cf., Juan Humberto Sánchez Case, supra note 4, para. 56; Cantos Case, supra note 6, para. 39; and Baena Ricardo et al. Case. February 2, 2001 Judgment. Series C No. 72, para. 78.

Assessment of the Testimonial Evidence and Expert Opinions

64. On February 27, 2003 the Inter-American Commission, after consulting with the representatives of the next of kin of the victim, requested, in light of the agreement signed by the parties, that only the testimony of Graciela Rosa Scavone, the victim's mother, and the expert opinions of Graciela Guilis and Sofía Tiscornia be heard. The Commission also adjusted the object of their testimony to matters pertaining to reparations, because of the agreement for a friendly settlement (supra 27).

65. During the second public hearing (supra 27), the State declared that it "desist[ed] from the objections raised" regarding expert witness Sofía Tiscornia and the written statement of expert witness García Méndez in its March 5, 2003 brief. Likewise, it asked "[the] Honorable Court to grant the Government of the Republic of Argentina the opportunity to submit, also in writing, a report by an expert who will address the same subjects as expert witness Sofía Tiscornia" (supra 27).

66. The Court admits the statement by Graciela Rosa Scavone (supra 56.a) insofar as it is in accordance with the object of the examination proposed by the Commission. In this regard, the Court deems that being a next of kin of the victim and having a direct interest in this case, her statements cannot be assessed in an isolated manner, but rather within the context of the body of evidence of the proceedings. Regarding reparations, the testimony of the next of kin of the victim is useful insofar as they can provide additional information on the consequences of the violations that may have occurred. [FN29]

[FN29] Cf., Juan Humberto Sánchez Case, supra note 4, para. 57; "Five Pensioners" Case, supra note 4, para. 85; and Cantos Case, supra note 6, para. 42.

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67. The Court admits the expert opinions of the expert witnesses offered (supra 53.a, 53.b, 56.b, and 56.c, and considers them to have probatory value because, as pointed out above (supra 42), as an international human rights court, it is not necessarily subject to the same formalities

required under domestic law, [FN30] but rather can assess the evidence supplied, including the expert opinions of expert witnesses, in such a way that they contribute to elucidate its consequences in the case. Furthermore, the Court highlights the fact that the expert opinions issued in the sub judice case were not challenged or disputed.

[FN30] Cf., Juan Humberto Sánchez Case, supra note 4, para. 30; "Five Pensioners" Case, supra note 4, para. 65; Cantos Case, supra note 6, para. 27; Las Palmeras Case, Reparations, supra note 5, para. 18; El Caracazo Case, Reparations, supra note 5, para. 38; Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 65; Trujillo Oroza Case. Reparations (Art. 63(1) American Convention on Human Rights). February 27, 2002 Judgment. Series C No. 92, para. 37; Bámaca Velásquez Case. Reparations (Art. 63(1) American Convention on Human Rights). February 22, 2002 Judgment. Series C No. 91, para. 15; Cantoral Benavides Case. Reparations (Art. 63(1) American Convention on Human Rights). December 3, 2001 Judgment. Series C No. 88, para. 22; Mayagna (Sumo) Awas Tingni Community Case, supra note 4, para. 89; Cesti Hurtado Case. Reparations (Art. 63(1) American Convention on Human Rights). May 31, 2001 Judgment. Series C No. 78, para. 21; "Street Children" Case (Villagrán Morales at al.). Reparations (Art. 63(1) American Convention on Human Rights). May 26, 2001 Judgment. Series C No. 77, para. 40; "White Van" Case (Paniagua Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). May 25, 2001 Judgment. Series C No. 76, para. 51; Ivcher Bronstein Case. February 6, 2001 Judgment. Series C No. 74, para. 65; "The Last Temptation of Christ" Case (Olmedo Bustos et al.). February 5, 2001 Judgment. Series C No. 73, paras. 49 and 51; Baena Ricardo et al. Case, supra note 28, para. 71; Case of the Constitutional Court. January 31, 2001 Judgment. Series C No. 71, para. 46; Bámaca Velásquez Case. November 25, 2000 Judgment. Series C No. 70, para. 96; Cantoral Benavides Case. August 18, 2000 Judgment. Series C No. 69, para. 45; Durand and Ugarte Case. August 16, 2000 Judgment. Series C No. 68, para. 45; Castillo Petruzzi et al. Case. May 30, 1999 Judgment. Series C No. 52, para. 61; Castillo Páez Case, November 3, 1997 Judgment. Series C No. 34, para. 39; Loayza Tamayo Case, September 17, 1997 Judgment. Series C No. 33, para. 42; and Paniagua Morales et al. Case. March 8, 1998 Judgment. Series C No. 37, para. 70.

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68. The Court will assess the probatory value of the documents, testimony, and expert opinions submitted in writing or rendered before the Court. Evidence submitted at all stages of the proceedings has been included in the same body of evidence, which is considered a whole. [FN31]

[FN31] Cf., Juan Humberto Sánchez Case, supra note 4, para. 60; Las Palmeras Case, Reparations, supra note 5, para. 34; and El Caracazo Case, Reparations, supra note 5, para. 62.

VIII. PROVEN FACTS

69. The Court has examined the items of evidence and the respective arguments of the parties and, as a result of this examination, finds the following facts to be proven:

3) A) With respect to the practice of massive detentions

1. at the time of the facts, there were indiscriminate police detention practices, including the so-called razzias, detentions to establish identity and detentions in accordance with police edicts on misdemeanors. Memorandum 40 authorized policemen to decide whether or not to notify the Juvenile Judge of children or adolescents detained; [FN32]

[FN32] Cf., Expert Opinion of Sofía Tiscornia before the Inter-American Court of Human Rights on March 6, 2003; Expert Opinion of Emilio García Méndez, submitted in writing on April 15, 2003, in a file at the Secretariat entitled "Caso Bulacio. Fondo. Tomo IV", sheets 801 and ff; and Expert Opinion of Máximo Emiliano Sozzo submitted in writing on April 21, 2003, in a file at the Secretariat entitled "Caso Bulacio. Fondo. Tomo IV", sheets 815 and ff.

B) With respect to Walter David Bulacio

2. Walter David Bulacio was born on November 14, 1973 and he lived in the Province of Buenos Aires, Argentina; [FN33]
3. Walter David Bulacio studied at a secondary school and worked as a caddie at a golf field, where he earned $400 (four hundred pesos), equivalent to US$400.00 (four hundred United States dollars) monthly; [FN34]
4. on April 19, 1991 the Argentine Federal Police conducted a massive detention, including that of youth Walter David Bulacio, in the vicinity of the Obras Sanitarias de la Nación stadium, where a rock concert was taking place; [FN35]
5. Walter David Bulacio died on April 26, 1991; [FN36]

[FN33] Cf., Birth certificate of Walter David Bulacio, issued on November 14, 1973 by the Registrar's Office of Marital Status and Capacity of Persons in the Municipality of the City of Buenos Aires, case nº 2,018 entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", at the Secretariat of the Court, volume I, sheet 22.
[FN34] Cf., Study certificate for Walter David Bulacio issued on October 31, 1900 by the Instituto Privado Incorporado a la Enseñanza Oficial "Juan Manuel de Rosas"; and Testimony of Graciela Rosa Scavone before the Inter-American Court on March 6, 2003.
[FN35] Cf., April 22, 1999 brief addressed by the 7th Police Station to the 35th Police Station, case No. 2,018 entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", at the Secretariat of the Court, volume I, sheets 14–15; Statement rendered on April 21, 1991 by the Deputy Inspector, Domingo Andrés Toledo, at the 7th Police Station, case No. 2,018, entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", at the Secretariat of the Court, volume I, sheet 1; and Rulings and attestation of preliminary proceedings issued on April 21, 1991 by the 7th Police Station, case No. 2,018, entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", at the Secretariat of the Court, volume I, sheet 2.

[FN36] Cf., Autopsy No. 851 of Walter David Bulacio on April 26, 1991 by physicians Ricardo Ernesto Risso and Daniel Adrián Crescenti, Forensic Physicians of the National Courts, case No. 2,018 entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", at the Secretariat of the Court, body I, sheet 43; and Death Certificate of Walter David Bulacio issued by the Departamento Central de Defunciones, Registro del Estado Civil y Capacidad de las Personas, Municipality of the city of Buenos Aires, case nº 2,018 entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", at the Secretariat of the Court, volume I, sheet 135.

C) With respect to domestic remedies

6. the court case regarding the injuries to and death of Walter David Bulacio, as well as that regarding his detention and that of other persons, underwent various judicial actions, such as disqualifications, objections, and challenges which have led to delays in the proceedings. Judicial actions that stand out in this regard include separation and joinder of the case, successive conflicts over jurisdiction, which have even reached the Supreme Court of Justice of the Nation, as well as decisions regarding dismissal of charges or of the case, several times, and various remedies filed against those decisions. To date there is no definitive judgment by the judiciary regarding the set of facts investigated. No one has been punished for his responsibility in the facts; [FN37]

[FN37] Cf., Case No. 2,018 entitled "ESPOSITO, Miguel Ángel s/privación ilegal de la libertad calificada y reiterada", fastened with rings in separate volumes of the main file at the Secretariat of the Court, volumes 1 to 14, with 2717 sheets; and sheets 2718 to 2901 of that same case.

D) With respect to Walter David Bulacio's family

7. Walter David Bulacio's next of kin were Víctor David Bulacio, his father; Graciela Rosa Scavone, his mother; Lorena Beatriz Bulacio, his sister, and María Ramona Armas de Bulacio, his grandmother on the father's side, as well as two half-brothers, Matías Emanuel Bulacio and Tamara Florencia Bulacio, children of the second companion of his father, Víctor David Bulacio. [FN38] His father, Víctor David Bulacio, died on April 4, 2000; [FN39]

8. Walter David Bulacio's father, mother, sister, and grandmother suffered pecuniary and non-pecuniary damage due to Walter David's illegal detention and subsequent death. [FN40] In this regard, the following damage stands out:

a) both parents fell into patterns of severe depression. The father lost his job and the ability to care for his children and he tried to commit suicide three times; [FN41]

b) Lorena Beatriz Bulacio, Walter David Bulacio's sister, suffered bulimia and tried to commit suicide twice. To date she is still psychologically affected by what happened to her brother and the rest of their family; [FN42]

c) María Ramona Armas de Bulacio, who participated very actively in exposing the facts that affected her grandchild, also suffered grave physical and psychological consequences; [FN43] and

d) these consequences to the physical and psychological health of the next of kin of Walter David Bulacio have continued over time. [FN44]

9. persisting impunity in the instant case causes suffering to the next of kin of Walter David Bulacio; [FN45]

[FN38] Cf., Birth certificate of Tamara Florencia Bulacio issued by the Provincial Directorate of the Registro de las Personas of the Ministerio de Gobierno of the Province of Buenos Aires on September 7, 2001, in a file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo III," sheet 771; copy of the national identity document of Tamara Florencia Bulacio, in a file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo III," sheet 771; birth certificate of Matías Emanuel Bulacio issued by the Provincial Directorate of the Registrar's Office or "Registro de las Personas" of the Ministry of the Interior of the Province of Buenos Aires on September 7, 2001, in a file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo III," sheet 772; copy of the national identity document of Matías Emanuel Bulacio, in a file at the Secretariat of the Court entitled "Caso Bulacio. Fondo. Tomo III," sheet 772; and Testimony of Graciela Rosa Scavone rendered before the Inter-American Court on March 6, 2003.

[FN39] Cf., Marriage certificate or "libreta de matrimonio" of Víctor David Bulacio and Graciela Rosa Scavone, in a file at the Secretariat of the Court entitled "Caso Bulacio (Reparaciones) Tomo I," sheets 123 to 125.

[FN40] Cf., Testimony of Graciela Rosa Scavone rendered before the Inter-American Court on March 6, 2003; and Expert Opinion of Graciela Marisa Guilis rendered before the Inter-American Court of Human Rights on March 6, 2003.

[FN41] Cf., Testimony of Graciela Rosa Scavone rendered before the Inter-American Court on March 6, 2003; and Expert Opinion of Graciela Marisa Guilis rendered before the Inter-American Court of Human Rights on March 6, 2003.

[FN42] Cf., Testimony of Graciela Rosa Scavone rendered before the Inter-American Court on March 6, 2003; and Expert Opinion of Graciela Marisa Guilis rendered before the Inter-American Court of Human Rights on March 6, 2003.

[FN43] Cf., Testimony of Graciela Rosa Scavone rendered before the Inter-American Court on March 6, 2003; and Expert Opinion of Graciela Marisa Guilis rendered before the Inter-American Court of Human Rights on March 6, 2003.

[FN44] Cf., Expert Opinion of Graciela Marisa Guilis rendered before the Inter-American Court of Human Rights on March 6, 2003.

[FN45] Cf., Testimony of Graciela Rosa Scavone rendered before the Inter-American Court on March 6, 2003; and Expert Opinion of Graciela Marisa Guilis rendered before the Inter-American Court of Human Rights on March 6, 2003.

E) With respect to representation of the next of kin before the inter-American system for protection of human rights and the expenses pertaining to said representation

10. the Coordinadora contra la Represión Policial e Institucional (CORREPI), the Centro de Estudios Legales y Sociales (CELS) and the Center for Justice and International Law (CEJIL), resorted to the inter-American human rights system on behalf of the next of kin of the victim, and incurred expenses pertaining to said actions. [FN46]

[FN46] Cf., Document entitled “Gastos del Centro de Estudios Legales y Sociales (CELS) en el litigio en sede interamericana del Caso Bulacio”, Annex 2 of the brief on reparations submitted by the Inter-American Commission on Human Rights, in a file at the Secretariat of the Court entitled “Caso Bulacio (Reparaciones) Tomo I,” sheet 27; document entitled “CORREPI, Coordinadora contra la represión policial e institucional”, Annex 3 of the brief on reparations filed by the Inter-American Commission on Human Rights in a file at the Secretariat of the Court entitled “Caso Bulacio (Reparaciones) Tomo I,” sheet 28; and document entitled “Costas y gastos del Centro por la Justicia y el Derecho Internacional en el Caso Bulacio”, Annex 4 of the brief on reparations filed by the Inter-American Commission on Human Rights in a file at the Secretariat of the Court entitled “Caso Bulacio (Reparaciones) Tomo I,” sheet 29.

IX. OBLIGATION TO REPAIR

70. Pursuant to what was stated in previous paragraphs, the State acknowledged its international responsibility for the violation of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection), in combination with non-compliance with the obligation to respect rights (Article 1(1)) and with the obligation to adopt domestic legal measures (Article 2), to the detriment of Walter David Bulacio, and for violation of the same Articles 8 and 25 to the detriment of the next of kin of youth Walter David Bulacio, all of them in connection with Article 1(1) and 2 of the American Convention (supra 38). This Court has reiterated, in its case law, that it is a principle of International Law that any violation of an international obligation that has caused damage involves a new obligation: to adequately redress the damage caused. [FN47] To this end, the Court has based itself on Article 63(1) of the American Convention, according to which,

> [i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party (not underlined in the original text).

[FN47] Cf., Juan Humberto Sánchez Case, supra note 4, para. 147; “Five Pensioners” Case, supra note 4, para. 173; Cantos Case, supra note 6, para. 66; El Caracazo Case, Reparations, supra note 5, para. 76; Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 202; Trujillo Oroza Case, Reparations, supra note 30, para. 60; Bámaca Velásquez Case, Reparations, supra note 30, para. 38; Cantoral Benavides Case, Reparations, supra note 30, para. 40; Mayagna (Sumo) Awas Tingni Community Case, supra note 4, para. 163; Cesti Hurtado Case. Reparations, supra note 30, para. 32; “Street Children” Case (Villagrán Morales at al.). Reparations, supra note 30, para. 59; “White Van” Case (Paniagua Morales et al.). Reparations, supra note 30, para. 78; Ivcher Bronstein Case, supra note 30, para. 177; Baena Ricardo et al. Case, supra note 28, para. 201; Case of the Constitutional Court, supra note 30, para. 118; Suárez

Rosero Case. Reparations (Art. 63(1) American Convention on Human Rights). January 20, 1999 Judgment. Series C No. 44, para. 40; Castillo Páez Case. Reparations, supra note 26, para. 50; Loayza Tamayo Case. Reparations (Art. 63.1 American Convention on Human Rights), November 27, 1998 Judgment. Series C No. 42, para. 84; Garrido and Baigorria Case. Reparations (Art. 63(1) American Convention on Human Rights). August 27, 1998 Judgment. Series C No. 39, para. 40; Caballero Delgado and Santana Case. Reparations (Art. 63(1) American Convention on Human Rights). January 29, 1997 Judgment. Series C No. 31, para. 15; Neira Alegría et al. Case. Reparations (Art. 63(1) American Convention on Human Rights). September 19, 1996 Judgment. Series C No. 29, para. 36; and El Amparo Case. Reparations (Art. 63(1) American Convention on Human Rights). September 14, 1996 Judgment. Series C No. 28, para. 14.

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71. As this Court has stated before, Article 63(1) of the American Convention reflects a customary rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. When an illicit act attributable to a State takes place, it incurs an international responsibility for violation of the international rule, with the consequent duty of redressing and putting an end to the consequences of the violation. [FN48]

[FN48] Cf., Juan Humberto Sánchez Case, supra note 4, para. 148; "Five Pensioners" Case, supra note 4, para. 174; and Cantos Case, supra note 6, para. 67.

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72. Reparation of the damage caused by breaching an international obligation requires, whenever feasible, full restitution (restitutio in integrum), which involves reestablishment of the situation before the violation. If this is not possible, as in the instant case, this international Court must order adoption of measures that, in addition to ensuring respect for the rights abridged, will remedy the consequences caused by the infractions, and for compensation to be paid for damage caused. [FN49] The obligation to redress, which is regulated in all its aspects (scope, nature, modes and establishment of beneficiaries) by international law, cannot be modified by the State nor can it avoid complying with it by invoking provisions of its domestic law. [FN50]

[FN49] Cf., Juan Humberto Sánchez Case, supra note 4, para. 149; Las Palmeras Case, Reparations, supra note 5, para. 38; and El Caracazo Case, Reparations, supra note 5, para. 77.
[FN50] Cf., Juan Humberto Sánchez Case, supra note 4, para. 149; Cantos Case, supra note 6, para. 68; and Las Palmeras Case, Reparations, supra note 5, para. 38.

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73. With respect to the violation of the right to life and certain other rights (liberty and humane treatment, fair trial and judicial protection), since restitutio in integrum is not possible and bearing in mind the nature of the juridical right impaired, reparation is made, inter alia, according to international case law, by means of just indemnification or pecuniary compensation. It is necessary to add positive measures that the State must adopt to ensure non-recidivism of injurious acts such as those of the instant case. [FN51]

[FN51] Cf., Juan Humberto Sánchez Case, supra note 4, para. 150; Trujillo Oroza Case, Reparations, supra note 30, para. 62; and Bámaca Velásquez Case, Reparations, supra note 30, para. 40.

X. BENEFICIARIES OF THE REPARATIONS

74. The Court will now summarize the arguments of the representatives of the next of kin of the victim and of the Inter-American Commission regarding the persons who should be considered beneficiaries of the reparations ordered by the Court.

Arguments of the representatives of the next of kin of the victim

75. The representatives stated that Walter David Bulacio deserves reparation in his own right, which under the circumstances of the instant case, would be inherited by his mother, Graciela Rosa Scavone, and his father, Víctor David Bulacio. Given the demise of the latter, Lorena Beatriz, Tamara Florencia and Matías Emanuel Bulacio, children of the deceased parent, also have rights through inheritance. It can be assumed that violation of the right to life causes direct pecuniary and non-pecuniary damage to the heirs of the deceased. The burden of proof that such damage did not occur lies, in this case, in the hands of the State. In this sense, Graciela Rosa Scavone (his mother); Víctor David Bulacio (his father); Lorena Beatriz Bulacio (his sister); and María Ramona Armas de Bulacio (his grandmother), all next of kin of Walter David Bulacio, are entitled to reparation in their own right, as a consequence of the violation of rights set forth in Articles 8 and 25 of the Convention.

Arguments of the Commission

76. Regarding the beneficiaries of reparations, the Commission stated that those who are entitled to them are: Walter David Bulacio, the victim, whose rights pass on to his heirs Graciela Rosa Scavone and Víctor David Bulacio, his parents, Lorena Beatriz Bulacio, his sister, and María Ramona Armas de Bulacio, his grandmother on his father's side, who should receive compensation in their double role as heirs of the victim and as persons directly affected. In the case of Víctor David Bulacio, his rights pass on to his heirs Lorena Beatriz, Matías Emanuel and Tamara Florencia Bulacio, his children.

Arguments of the State

77. The State pointed out that while the Court has adopted criteria to establish the beneficiaries of the reparations, the State can contribute some provisions of its Civil Code and of domestic family law, which it believes should be taken into account to identify them. It also stated that to establish the beneficiaries of the reparations it would be necessary to take into account the closeness of family ties, the specific circumstances of relations with the victim, the conditions of the next of kin as witness to the facts, the way he or she became involved in attempts to obtain information, and the reply given by the State to the steps taken.

Considerations of the Court

78. The Court will now establish the person or persons who are the "injured party," in the instant case, under the terms of Article 63(1) of the American Convention. The criterion followed by this Court was that of presuming that death of a person causes non-pecuniary damage to the closest members of his or her family, especially those who were in close emotional contact with the victim. [FN52] In this regard, it is appropriate to note that Article 2(15) of the Rules of Procedure [FN53] states that the term "next of kin of the victim" must be understood as a broad concept that includes all persons linked through close kinship, including the parents, siblings and grandparents, who might have a right to compensation, insofar as they meet the requirements set forth in the case law of this Court. [FN54]

[FN52] Cf., Juan Humberto Sánchez Case, supra note 4, para. 156; Las Palmeras Case, Reparations, supra note 5, paras. 54-55; and Trujillo Oroza Case, Reparations, supra note 30, para. 57.

[FN53] Pursuant to Article 2 of the Rules of Procedure, the term "next of kin" means "the immediate family, that is, the direct ascendants and descendants, siblings, spouses or permanent companions, or those determined by the Court, if applicable."

[FN54] Cf., Juan Humberto Sánchez Case, supra note 4, para. 156; Las Palmeras Case, Reparations, supra note 5, paras. 54 and 55; and Trujillo Oroza Case, Reparations, supra note 30, para. 57.

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79. In light of the agreement for a friendly settlement, in which the State acknowledged its international responsibility, the Court notes that there is no controversy between the parties regarding who are the victims, beneficiaries, and next of kin in the instant case. [FN55] It is the understanding of this Court that the violations of the American Convention were committed against Walter David Bulacio, Víctor David Bulacio (the father), Graciela Rosa Scavone (the mother), Lorena Beatriz Bulacio (his sister) and María Ramona Armas de Bulacio (the grandmother on his father's side). All of them should be considered encompassed under the category of victims and entitled to reparations set by the Court, regarding both pecuniary damage, when appropriate, and non-pecuniary damage. As regards Walter David Bulacio and Víctor David Bulacio, their right to reparation will pass on to their heirs through inheritance, in the manner stated above (infra 85, 86, 103 and 104).

[FN55] Cf., Durand and Ugarte Case. Reparations (Art. 63(1) American Convention on Human Rights). December 3, 2001 Judgment. Series C No. 89, para. 27.

XI. REPARATIONS FOR PECUNIARY AND NON-PECUNIARY DAMAGE

80. In accordance with the probatory elements gathered during the various stages of the proceedings and in light of the criteria set forth by this Court, the Court will now analyze the

claims filed by the parties during this stage of the proceedings, to establish reparation measures pertaining to pecuniary and non-pecuniary damage and other forms of reparation.

A) PECUNIARY DAMAGE

Arguments of the representatives of the next of kin of the victim

81. During the public hearing and in their brief with final arguments, the representatives of the next of kin of the victim asked the Court (supra 26 and 29) to consider the following points to establish compensation:

a) as the State has noted, there is an ongoing civil lawsuit; however, it has been a "non-effective judicial remedy" under the terms of Article 8 of the American Convention, as it depends on completion of the criminal proceedings, which have been ongoing for over ten years in domestic courts; furthermore, those with active and passive legal standing are not the same in the domestic and international proceedings, nor is the process for compensation the same;
b) the income that Walter David Bulacio would have obtained throughout his life as a golf caddie, under the criteria established by the Court, are estimated at US$201,240.00 (two hundred and one thousand two-hundred and forty United States dollars);
c) nevertheless, Walter David Bulacio "would not have worked all his life as a golf caddie," since he intended to become a lawyer. This "chance lost" by Walter David Bulacio must also be fully compensated, taking into account that he was in his last year of secondary school and would surely have entered the university and, subsequently, would have entered the job market, where it "is reasonable and equitable" to start from an average salary of US$600.00 (six hundred United States dollars), to which it is necessary to add the annual complementary salary and to apply the criteria established by this Court, inter alia, personal expenses, interest, etc.;
d) with respect to damage to the family estate, it is necessary to take into account that part of Walter David Bulacio's income "as a caddie at a golf club" was given to his mother, as well as the financial support that he would give his parents once he was a professional; and
e) the expenses incurred by the Bulacio family for the funeral and to buy the grave at the cemetery, estimated at US$3,000.00 (three thousand United States dollars), plus interest.

Arguments of the Commission

82. With respect to pecuniary damage, the Commission pointed out that:

a) while a civil lawsuit is ongoing with respect to financial compensation due for violations suffered by the victim, it depends on a criminal case in which no judgment has been issued after twelve years; therefore, it has not been possible to attain a judgment "that satisfies the requirements of justice;" on the other hand, the domestic civil lawsuit "will hardly satisfy said requirements," taking into account that the facts have been classified merely as arbitrary detention;
b) estimation of the damage in cases pertaining to a violation of the right to life refers to income that the victim would have obtained during his working life. In this regard, the amount to be paid for Walter David Bulacio's lost income derives from an average of what the victim earned at the time of the facts as a caddie in a golf course, that is US$400.00 (four hundred

United States dollars) monthly, to which salary it is necessary to add an annual complementary salary during the rest of his probable lifespan, an amount which, after applying the criteria established by the Court for this item, adds up to US$201,240.00 (two hundred and one thousand two hundred and forty United States dollars);
c) the Court must take into account that it was foreseeable that Walter David Bulacio would obtain a secondary school diploma and enter the university, and that as an attorney his income would have increased approximately US$200.00 (two hundred United States dollars), and therefore US$100,620.00 (one hundred thousand six hundred and twenty United States dollars) should be added to the lost earnings, which would be part of compensation for "lost chance;" and
d) the next of kin incurred other expenses: US$1,000.00 (one thousand United States dollars) to cover funeral expenses for the victim, and US$2,000.00 (two thousand United States dollars) to cover expenses for a grave at the cemetery. The respective interest must be added to the aforementioned amounts.

Arguments of the State

83. With respect to the requests made by the representatives of the next of kin of the victim and the Commission, the State argued that:

a) there is an ongoing civil lawsuit under domestic jurisdiction in which the family of the victim has claimed damages derived from the case; if the Court sets pecuniary reparations, this would involve "discontinuance of the local action;"
b) pursuant to the case law of the Court, establishment of lost earnings should take into account what the family's activities were and what were the consequences of the death of the victim on them; on the other hand, the State objected to the amount claimed for lost income of Walter David Bulacio; it is unrealistic for him to have a salary of US$400.00 (four hundred United States dollars), because as a caddie, as the internal file shows, "he did not work under a direct relationship of dependence, for which reason he did not have fixed hours nor a salary." Furthermore, youth Bulacio would not spend only 25% of his income, that is, US$100.00 (one hundred United States dollars) and save the rest;
c) as regards compensation for Walter David Bulacio's "lost chance," the Commission conducts a purely hypothetical analysis when it states that he had a great probability of increasing the amount of his income by completing secondary studies and beginning a college career, and that it was foreseeable that he would enter the university and obtain a higher degree; this Court has set forth that it is necessary to have sufficient grounds to establish probable realization of the damage, and in the instant case there is insufficient evidence to demonstrate "lost chance;" and
d) the State declared that it will accept what the Commission demonstrates, at the appropriate time, with respect to expenses incurred by the family.

Considerations of the Court

a) Lost earnings

84. The representatives of the victim and the Inter-American Commission requested compensation for the Walter David Bulacio's lost earnings, based on the monthly salary that he

received as a caddie at the golf course. This Court deems that it has been proven that youth Bulacio received a monthly income of $400 (four hundred pesos), equivalent to US$400.00 (four hundred United States dollars); however, it deems that given the nature of the activity he did not receive a complementary salary, as his income came from tips given by the clients. The Court also deems that it is reasonable to assume that youth Bulacio would not have carried out this activity the rest of his life, but there is no certain fact that makes it possible to ascertain the activity or profession that he would have exercised in the future, that it, that there are insufficient grounds to establish the loss of a definite chance, which "must be estimated on the basis of certain damage with sufficient grounds to establish the probable realization of said damage." [FN56] Due to the above, the Court decides to set, in fairness, US$100,000.00 (one hundred thousand United States dollars) as compensation for Walter David Bulacio's lost earnings.

[FN56] Cf., Castillo Páez Case, Reparations, supra note 26, para. 74.

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85. With respect to inheritance of the right to compensation in favor of Walter David Bulacio, this Court has developed applicable criteria to the effect that: the children, spouses and parents must receive the compensation. [FN57] This Court points out that in the instant case, the victim was an adolescent and had neither children nor spouse; therefore, the compensation must be given to his parents. It has been proven before this Court that Víctor David Bulacio, the victim's father, has died (supra 69.7), and therefore compensation must be paid in full to the mother of the victim, Graciela Rosa Scavone, since pursuant to the criteria set forth by this Court, "[i]f one of the parents has died, his or her part will accrue to that of the other." [FN58]

[FN57] Cf., Juan Humberto Sánchez Case, supra note 4, para. 164; and El Caracazo Case, Reparations, supra note 5, para. 91.

[FN58] Cf., El Caracazo Case, Reparations, supra note 5, para. 91.c).

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86. The criteria set forth regarding the beneficiaries of compensation for pecuniary damage in the previous paragraph will also be applied to distribution of compensation for non-pecuniary damage (infra 103).

b) Consequential damage

87. With respect to the expenses incurred by the next of kin of Walter David Bulacio for his burial, regarding which they did not contribute evidence, this Court deems it appropriate for the mother of the victim, Graciela Rosa Scavone, to receive US$3,000.00 (three thousand United States dollars).

c) Damage to Family Estate

88. This Court also notes that the next of kin of the victim lost their jobs or the possibility of conducting their daily activities due to the change in their personal circumstances because of the

facts referred to in the instant case. They also incurred medical expenses to address the various ailings caused by these facts. Neither the representatives nor the Commission estimated the expenses involved by all this. The Court deems it fair to set the damage to the family estate at US$21,000.00 (twenty-one thousand United States dollars), which must be distributed in equal parts to Lorena Beatriz Bulacio, Graciela Rosa Scavone and María Ramona Armas de Bulacio.

89. Based on all the above, the Court sets the following amounts as compensation for pecuniary damage for the violations found:

Reparations for pecuniary damage			
	Lost earnings/Damage to Family Estate	Burial expenses	Total
Walter David Bulacio	US$100,000.00		US$100,000.00
Graciela Rosa Scavone	US$7,000.00	US$3,000.00	US$10,000.00
María Ramona Armas de Bulacio	US$7,000.00		US$7,000.00
Lorena Beatriz Bulacio	US$7,000.00		US$7,000.00
TOTAL	US$124,000.00		

B) NON-PECUNIARY DAMAGE

90. The Court will now consider those injurious effects of the facts that are not financial or pertaining to the estate. Non-pecuniary damage can include suffering and distress caused to the direct victims and to their next of kin, and detriment to very significant values of persons, such as non-pecuniary alterations in the conditions of existence of the victim or the victim's family. This damage can only be compensated by amounts set by the Court through reasonable application of judicial discretion. [FN59]

[FN59] Cf., Juan Humberto Sánchez Case, supra note 4, para. 168; El Caracazo Case, Reparations, supra note 5, para. 94; and Trujillo Oroza Case, Reparations, supra note 30, para. 77.

Arguments of the representatives of the next of kin of the victim

91. The representatives argued that:

a) while it is presumed that there was non-pecuniary damage to the victim, it is necessary to mention the fear and anguish which Walter David Bulacio must have felt, in a situation of defenselessness during the hours from when he was detained until he lost consciousness, during which he must have felt spiritual suffering which must be compensated "adequately through his heirs apparent;"

b) the parents of the victim, Víctor David Bulacio and Graciela Rosa Scavone, were seriously affected by the facts and, especially, by subsequent denial of justice after the detention and death of their son. In the father's case, his physical and spiritual deterioration due to what happened to his son led to several attempts to commit suicide;

a) with respect to Lorena Beatriz Bulacio, the victim's sister, compensation must be made for her spiritual suffering, which in her case generated grave pathological psychological consequences; and
b) finally, María Ramona Armas de Bulacio, the grandmother of the victim, who "undertook the family mandate of not allowing Walter's case to be forgotten by society," must receive compensation "for her immense grief."

Arguments of the Commission

92. Walter David Bulacio and his next of kin experienced moral suffering because of the facts in the instant case. Therefore, they have a right to reparation, as "it is clear [...] that Walter's detention and death have had a catastrophic impact on the family;" the damage caused by the traumatic situation they suffered has left effects and scars, many of them "irremediable." Furthermore, the next of kin of the victim have sought justice for almost twelve years, without attaining effective results, which has also brought them negative consequences. Specifically, the Commission pointed out that:

a) it is part of human nature that any person subject to aggression and maltreatment experiences deep moral suffering, which extends to the closest members of the family, especially those who were in close emotional contact with the victim;
b) Walter David Bulacio's family "broke down" after the facts, family structure was lost and there have been physical consequences, such as the various illnesses suffered by members of the family;
c) the victim's sister, Lorena Beatriz Bulacio, has suffered health problems, has attempted to commit suicide several times, and has been incapable "of establishing [an] emotional attachment outside the family;"
d) the grandmother on the victim's father's side deeply suffered Walter David Bulacio's death because she had a very close relationship with him; and
e) the situation of the next of kin has worsened due to lack of "an effective response on the part of the system of justice," because in this situation "the pain and grieving become an unending process that does not cease to affect their lives." The members of the Bulacio family "have suffered tremendous anguish due to the unending judicial process and [to] the impunity prevailing in this case."

93. Therefore, the Commission stated that it deemed fair for the Court to set the overall amount of US$200,000.00 (two hundred thousand United States dollars) as compensation for the non-pecuniary damage caused to the victim and his immediate next of kin: his parents, his sister and his grandmother on the father's side.

Arguments of the State

94. The State made the following arguments:

a) the amount estimated by the Commission for this item constitutes 66.25% of the amount claimed for pecuniary damage, a percentage that is high if one takes into account that in Argentina the ratio of these two amounts varies between 20% and 40%;
b) the amounts claimed for non-pecuniary damage exceed those usually set by the Inter-American Court for this item, something that should be taken into account in the instant case;
c) both the content of the agreement reached for a friendly settlement, and the acknowledgments made therein, constitute in themselves "a satisfactory reparation;" and
d) the expert opinion of expert witness Graciela Marisa Guilis before the Court does not provide sufficient grounds to establish the impact of the facts on the next of kin of the victim, and her conclusions are not derived from the use of complex mechanisms for diagnosis, but rather from "recent knowledge" regarding the family of Walter David Bulacio.

Considerations of the Court

95. The Court deems that case law serves as orientation to establish principles regarding this matter, although it cannot be invoked as a an unambiguous criterion, because each case must be analyzed in accordance with its own characteristics. [FN60] It should be added that in the instant case the State has acknowledged its international responsibility.

[FN60] Cf., Trujillo Oroza Case, Reparations, supra note 30, para. 82; "White Van" Case (Paniagua Morales et al.), Reparations, supra note 30, para. 104; and Blake Case. Reparations (Art. 63(1) American Convention on Human Rights). January 22, 1999 Judgment. Series C No. 48, para. 54.
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96. International case law has repeatedly established that the judgment constitutes per se a form of reparation. [FN61] Nevertheless, due to the grave circumstances of the instant case, the intensity of the suffering caused to the victim and his next of kin, the change in the conditions of existence of the family and the other non-pecuniary consequences they suffered, the Court deems it pertinent for compensation to be paid, in fairness, for non-pecuniary damage. [FN62] In previous cases, this Court has pointed out that when there is acknowledgment of responsibility by the State, evidence is not required to demonstrate the damage caused. [FN63]

[FN61] Cf., Juan Humberto Sánchez Case, supra note 4, para. 172; "Five Pensioners" Case, supra note 4, para. 180; Las Palmeras Case, Reparations, supra note 5, para. 74; Trujillo Oroza Case, Reparations, supra note 30, para. 83; Bámaca Velásquez Case, Reparations, supra note 30, para. 60; Cantoral Benavides Case, Reparations, supra note 30, para. 57; Mayagna (Sumo) Awas Tingni Community Case, supra note 4, para. 166; Cesti Hurtado Case. Reparations, supra note 30, para. 51; "Street Children" Case (Villagrán Morales at al.), Reparations, supra note 30, para. 88; and "White Van" Case (Paniagua Morales et al.), Reparations, supra note 30, para. 105. Likewise, Cf. Eur.. Court HR, Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303-A, para. 33; Eur. Court HR, Boner v. the United Kingdom judgment of 28 October 1994,

Series A no. 300-B, para. 46; Eur. Court HR, Kroon and Others v. the Netherlands judgment of 27 October 1994, Series A no. 297-C, para. 45; Eur. Court H.R., Darby v. Sweden judgment of 23 October 1990, Series A no. 187, para. 40; Eur. Court H.R., Wassink v. The Netherlands judgment of 27 September 1990, Series A no. 185-A, para. 41; Eur. Court H.R., Koendjbiharie v. The Netherlands, judgment of 25 October 1990, Series A no. 185-B, para. 34; and Eur. Court H.R., Mc Callum v. The United Kingdom judgment of 30 August 1990, Series A no. 183, para. 37.

[FN62] Cf., Juan Humberto Sánchez Case, supra note 4, para. 172; El Caracazo Case, Reparations, supra note 5, para. 99; and Trujillo Oroza Case, Reparations, supra note 30, para. 83.

[FN63] Cf., Trujillo Oroza Case, Reparations, supra note 30, para. 85; Garrido and Baigorria Case, Reparations, supra note 47, para. 49; and Aloeboetoe et al. Case. Reparations (Art. 63(1) American Convention on Human Rights). September 10, 1993 Judgment. Series C No. 15, para. 52.

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97. In the sub judice case, the representatives of the next of kin of the victim and the Commission referred to various non-pecuniary damage caused to Walter David Bulacio and his next of kin by the facts. Such damage includes physical and psychological suffering of the victim as a consequence of his detention and death; and the suffering caused by lack of communication of the detention of Walter David Bulacio to his parents, allegations that Walter David Bulacio was a youth with doubtful behavior, and lack of investigation and punishment of those responsible for what took place.

98. As the State has recognized, Walter David Bulacio was detained by agents of the State, and died one week after his detention, because of "an inappropriate exercise of the duty of custody" by the State (supra 32). It is part of human nature that a person subject to arbitrary detention experiences deep suffering, [FN64] accentuated in the case of children. [FN65] It is reasonable to conclude that such distress extends to the closest members of the family, especially those who were in close emotional contact with the victim. No evidence is required to reach this conclusion. [FN66] As has been proven, the above also extends to the parents, to the grandmother on his father's side and to his sister, Lorena Beatriz, who had close ties with Walter David Bulacio as members of an integrated family.

[FN64] Cf., Juan Humberto Sánchez Case, supra note 4, para. 174; Trujillo Oroza Case, Reparations, supra note 30, para. 85; and Bámaca Velásquez Case, Reparations, supra note 30, para. 62.

[FN65] Cf., "Street Children" Case (Villagrán Morales at al.). Reparations, supra note 30, para. 91.b); and Juridical status and human rights of the child, supra note 4, para. 87.

[FN66] Cf., Juan Humberto Sánchez Case, supra note 4, para. 175; El Caracazo Case, Reparations, supra note 5, para. 50 e); and Trujillo Oroza Case, Reparations, supra note 30, para. 88.

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99. This Court deems that it was proven (supra 69.D.8) that the damage suffered by Walter David Bulacio's father, mother, sister and grandmother includes, significantly, the deep depression of the parents and the loss of the possibility of caring for their children, in this case by the father. Walter David Bulacio lost his job and tried to commit suicide several times, as did the sister of the victim, who also suffered bulimia. Finally, María Ramona Armas de Bulacio, the victim's grandmother, who participated very actively in the processing of the case, suffered grave physical and psychological consequences.

100. Despite the fact that compensation for future medical expenses was not included in the requests made by the Inter-American Commission and the representatives, the Court finds that compensation for non-pecuniary damage should also include, based on information received, case law [FN67] and the proven facts, an amount of money for future medical expenses of the next of kin of the victim: Lorena Beatriz Bulacio, Graciela Rosa Scavone and María Ramona Armas de Bulacio, as there is sufficient evidence to demonstrate that the suffering of the latter originated both in what happened to Walter David Bulacio and in the subsequent pattern of impunity (supra 69.C.6, 69.D.9 and infra 119 and 120). The Court deems it appropriate to set as compensation for said component, in fairness, the amount of US$10,000.00 (ten thousand United States dollars) to be distributed in equal parts among Lorena Beatriz Bulacio, Graciela Rosa Scavone and María Ramona Armas de Bulacio.

[FN67] Cf., Cantoral Benavides Case, Reparations, supra note 30, para. 51; Blake Case, Reparations, supra note 60, para. 50; and Loayza Tamayo Case, Reparations, supra note 47, para. 129.d).

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101. It was demonstrated that there was impunity in the instant case (supra 69.D.9, which has caused and continues to cause suffering to the next of kin, who feel vulnerable and defenseless vis-à-vis the State, a situation that causes them deep anguish and does not allow them to carry out their lives in a normal manner.

102. Bearing in mind what has been stated regarding the damage caused, the Court sets the value of compensations for non-pecuniary damage, which must be paid to the next of kin of the victim, as follows:

Reparations for Non-Pecuniary Damage	
Victim and next of kin	Amount
Walter David Bulacio	US$55,000.00
Graciela Rosa Scavone	US$50,000.00 and what was set forth in paragraph 100
Víctor David Bulacio	US$30,000.00
María Ramona Armas de Bulacio	US$35,000.00 and what was set forth in paragraph 100
Lorena Beatriz Bulacio	US$30,000.00 and what was set forth in paragraph 100
TOTAL	US$210,000.00

103. Compensation for non-pecuniary damage to Walter David Bulacio will be distributed in the same terms as paragraph 85.

104. Compensation ordered in favor of Víctor David Bulacio, the father of the victim, must be distributed in equal parts among the surviving next of kin: his mother, María Ramona Armas de Bulacio; his wife, Graciela Rosa Scavone, and his three children: Lorena Beatriz, Tamara Florencia and Matías Emanuel Bulacio.

XII. OTHER FORMS OF REPARATION

105. The Court will now consider other injurious effects of the facts, which are not financial nor pertaining to the estate, and which could be redressed by acts carried out by the authorities, including investigation and punishment of those responsible and which vindicate the memory of the victim, provide consolation to his relatives and signify official reproval of the human rights violations that took place, and that involve a commitment to non-recidivism of facts such as those of the instant case.

Arguments of the representatives of the next of kin of the victim

106. With respect to the non-pecuniary measures of reparation, the representatives of the next of kin of the victim made the following comments:

a) the main reparation sought is for the State to adopt such measures as may be necessary to give legal effect to the obligation to effectively investigate the authors of the violations of the human rights of Walter David Bulacio, and specifically for the State to adopt such "energetic" actions as may be necessary to avoid extinguishment of the case, which "could deny effective application of the provisions of the American Convention," and to ensure that the Bulacio family is included in the criminal case as a plaintiff. Furthermore, for the State to undertake such investigations as may be necessary to administratively try the authors of the violations of the human rights of Walter David Bulacio and for "police captain Espósito to be dismissed from the Argentine Federal Police." Finally, for those who allowed impunity to prevail in the instant case to be investigated and punished, and for the State to avoid delays in the processing of the criminal case "through purely delay tactics by the defense counsel of the accused," to order that the evidence offered by the Bulacio family over these 12 years be submitted, and to instruct the Public Prosecutor's Office to "play a truly leading part" in the investigation;

b) the State should take such actions and legal steps as necessary for the detention places to be adequate and to have due permanent control. In this regard, they pointed out that minors are held at the police stations when they are detained, in places where adult detainees are also held. So as to ensure physical safety and decent lodging conditions in cases of detention of children and adolescents, it is necessary to forbid that they be held together with adults, and it should be specified that the detention centers be especially designed for this purpose, with permanent control by especially trained staff;

c) the State must order such actions and legal steps as may be necessary for the Argentine legal system to explicitly regulate causes for detention of children, pursuant to the terms of the

American Convention, and establish a maximum period of detention and the respective notice to the next of kin and to a competent judge; and

d) the State must carry out "acts or works with public repercussion or scope such that they have [the] effect of preserving remembrance of the victims, reestablishment of their dignity, consolation to their relatives, and transmission of an official message [...] for non-recidivism of [said violations of human rights]." For this, it is necessary to promote and fund a documentary on the case of David Bulacio, by means of a public contest, with a jury constituted with consent by the next of kin of the victim, and to ensure its dissemination in the movie theaters and on television. It is also necessary for the international responsibility of the State for the illegal detention, torture, and death of Walter David Bulacio to be publicly and massively recognized, as well as its responsibility for not having investigated, for over ten years, what happened, and for not having identified those responsible. Acknowledgment of this responsibility must be published in the most important printed media of the country; and the State must use all effective means within its power for said symbolic measures to generate interest and involvement of the media.

Arguments of the Commission

107. The Commission asked the Court to order the State to make non-pecuniary reparations, as follows:

a) the State must adopt such measures as may be necessary to give legal effect to the obligation to investigate and effectively punish the authors of the illegal detention, torture, and death of Walter David Bulacio. In this regard, the State must ensure that extinguishment of the criminal case will be avoided, as well as unnecessary delays in its processing; it must also order that the evidence offered by the attorneys for the Bulacio family throughout the 10 years of the proceedings be supplied. It must also instruct the Public Prosecutor's Office to play a "truly leading role" in the investigation, and to avoid lack of investigation of the case;

b) the State must adopt such actions and legal measures as may be necessary to ensure that places for detention of minors are adequate and have due permanent control. In this regard, the Commission deemed it necessary for the State to adopt a law pursuant to which detainees who are minors cannot be kept in police stations together with adults, and detention centers for the former must be entrusted to qualified staff for this task;

c) the State must adopt such legal, political, and administrative or other measures as may be required to ensure that detainees who are minors are rapidly presented before a judicial authority to review the legality of their detention;

d) the State must establish, pursuant to the agreement for a friendly settlement, a committee formed by experts on the subject to review and propose amendments to the laws and decrees, as well as orders, circular letters or institutional communications that make it possible to detain persons on police authority without objectively justifying causes, as well as mistreatment of detainees; and

e) the State must publicly acknowledge its responsibility in the instant case, specifically to recognize its international responsibility, publicly and massively, for the illegal detention, torture, and death of Walter David Bulacio, as well as its responsibility for not investigating, for 10 years, what happened and not identifying those responsible. It must publish an acknowledgment of its responsibility in the most important printed media of the country. It must

also fund a documentary on the facts in the Bulacio case "for society as a whole to know the details of the violations and the acknowledgment of responsibility made at the time of the agreement for a friendly settlement;" and use all effective means within its power for these symbolic measures to generate interest and participation by the media.

Arguments of the State

108. With respect to the aforementioned requests, the State pointed out:

a) regarding the request for non-pecuniary measures of reparation, "with the signing by the [g]overnment of the agreement for a friendly settlement, the Republic of Argentina has completely fulfilled said requirements." In this regard, the State argued that it has acknowledged international responsibility for the case, and this was made public through the country's main newspapers. In view of the above, it asked the Court to find that the State has complied with the non-pecuniary reparations requested by Inter-American Commission and the representatives of the next of kin of the victim; and

b) there is progress regarding domestic legislation derived from the facts of the case: both the federal government and several of the provincial governments promoted and attained progress regarding legislation and its application. Said progress includes: the Appellate Court ratified the effectiveness of Law No. 10,903 and, therefore, annulled Memorandum 40, stating that "it finds itself under the obligation to reiterate that in all cases in which a minor is taken to a police station as a consequence of a misdemeanor or of the authority granted by the Organizational Law of the Federal Police, the [c]orrectional [j]udge on duty must be immediately notified for effective compliance with Law 10,903". The Criminal Procedural Code of the Nation was amended, replacing the written and mediate proceeding by an oral and immediate proceeding. Police edicts were annulled "in the territory in which the facts took place." The National Constitution was amended, providing constitutional status to the human rights treaties, including the American Convention on Human Rights and the Convention on the Rights of the Child. A bill was submitted regarding the subject matter at a federal level, "which has been supported by the UNICEF office in Argentina," and seven other bills are being processed to regulate the legal system applicable to persons under the age of 18 who break the criminal law. Law No. 23,950 was approved, pursuant to which no person can be detained without an order by a competent judge, and the time to establish his or her identity will in no case surpass ten hours; and rules have been and continue to be amended, since 1991, in the various provinces of Argentina, "as a process of adaptation of rules to social reality."

Considerations of the Court

109. The Court will now analyze other forms of reparation in light of the acknowledgment of international responsibility by the State regarding Articles 1, 2, 4, 5, 7, 19, 8 and 25 of the American Convention, under the following headings: A) Investigation and Punishment of Those Responsible, B) Guarantees of non-recidivism of the injurious acts, and C) Adjustment of domestic provisions with respect to those of the American Convention.

A) INVESTIGATION AND PUNISHMENT OF THOSE RESPONSIBLE

110. This Court has stated several times that:

[t]he State party to the American Convention has the duty to investigate human rights violations and to punish those responsible and the accessories after the fact. And all persons who considers themselves to be victims of said violations, as well as their next of kin, have the right to resort to justice to ensure that this duty of the State is fulfilled, for their benefit and that of society as a whole. [FN68]

[FN68] Cf., Juan Humberto Sánchez Case, supra note 4, para. 184; El Caracazo Case, Reparations, supra note 5, para. 115; Las Palmeras Case, Reparations, supra note 5, para. 66; Trujillo Oroza Case, Reparations, supra note 30, para. 99; Bámaca Velásquez Case, Reparations, supra note 30, paras. 76 and 77; and Cantoral Benavides Case, Reparations, supra note 30, paras. 69 and 70.

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111. Active protection of the right to life and of the other rights enshrined in the American Convention is set within the framework of the duty of the State to ensure free and full exercise of the rights of all persons under the jurisdiction of a State, and it requires that the latter take such steps as may be necessary to punish deprivation of the right to life and other human rights violations, as well as to prevent abridgment of any of these rights by its own security forces or by third parties acting with its acquiescence. [FN69]

[FN69] Cf., Juan Humberto Sánchez Case, supra note 4, para. 110; Bámaca Velásquez Case, supra note 30, para. 172; and "Street Children" Case (Villagrán Morales at al.). November 19, 1999 Judgment. Series C No. 63, paras. 144-145. Likewise, General Comment No. 6 (Sixteenth session, 1982), para. 3, supra note 123; María Fanny Suárez de Guerrero v. Colombia. Brief No. R.11/45 (February 5, 1979), U.N. Doc. Supp. No. 40 (A/37/40) in 137 (1982), page 137.

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112. This Court has repeatedly stated that the obligation to investigate must be carried out "in all seriousness and not as a mere formality, destined beforehand to be fruitless." [FN70] The investigation conducted by the State to comply with this obligation "[m]ust have a purpose and be undertaken by [it] as a juridical obligation of its own and not as a mere processing of private interests, subject to procedural initiative of the victim or his or her next of kin or to evidence privately supplied, without the public authorities effectively seeking the truth." [FN71]

[FN70] Cf., Juan Humberto Sánchez Case, supra note 4, para. 144; Bámaca Velásquez Case, supra note 30, para. 212; and "Street Children" Case (Villagrán Morales at al.), supra note 69, para. 226.

[FN71] Cf., Juan Humberto Sánchez Case, supra note 4, para. 144; Bámaca Velásquez Case, supra note 30, para. 212; and "Street Children" Case (Villagrán Morales at al.), supra note 69, para. 226.

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113. The Court notes that since May 23, 1996, the date on which the defense counsel was notified of the request by the public prosecutor of a 15 year prison sentence against Police Captain Espósito, for the reiterated crime of aggravated illegal imprisonment, the defense counsel for the accused filed a large number of diverse legal questions and remedies (requests for postponement, challenges, incidental pleas, objections, motions on lack of jurisdiction, requests for annulment, among others), which have not allowed the proceedings to progress toward their natural culmination, which has given rise to a plea for extinguishment of the criminal action.

114. This manner of exercising the means that the law makes available to the defense counsel has been tolerated and allowed by the intervening judiciary bodies, forgetting that their function is not exhausted by enabling due process that guarantees defense at a trial, but that they must also ensure, within a reasonable time, [FN72] the right of the victim or his or her next of kin to learn the truth about what happened and for those responsible to be punished.

[FN72] Cf., Hilaire, Constantine and Benjamin et al. Case, supra note 5, paras. 142 to 144; Suárez Rosero Case. November 12, 1997 Judgment. Series C No. 35, paras. 71 and 72; and Genie Lacayo Case. January 29, 1997 Judgment. Series C No. 30, para. 77.

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115. The right to effective judicial protection therefore requires that the judges direct the process in such a way that undue delays and hindrances do not lead to impunity, thus frustrating adequate and due protection of human rights.

116. With respect to the extinguishment invoked with respect to an ongoing case under domestic law (supra 106.a and 107.a), this Court has stated that extinguishment provisions or any other domestic legal obstacle that attempts to impede the investigation and punishment of those responsible for human rights violations are inadmissible. [FN73] The Court deems that the general obligations enshrined in Articles 1(1) and 2 of the American Convention require that the States Party adopt timely provisions of all types for no one to be denied the right to judicial protection, [FN74] enshrined in Article 25 of the American Convention.

[FN73] Cf., Trujillo Oroza Case, Reparations, supra note 30, para. 106; Barrios Altos Case, supra note 3, para. 41; and Barrios Altos Case. Interpretation of the Judgment on the Merits. (Art. 67 American Convention on Human Rights). September 3, 2001 Judgment. Series C No. 83, para. 15.

[FN74] Cf., Barrios Altos Case, supra note 3, para. 43.

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117. In accordance with the obligations undertaken by the States pursuant to the Convention, no domestic legal provision or institution, including extinguishment, can oppose compliance with the judgments of the Court regarding investigation and punishment of those responsible for human rights violations. If that were not the case, the rights enshrined in the American Convention would be devoid of effective protection. This understanding of the Court is in

accordance with the language and the spirit of the Convention, as well as the general principles of law; one of these principles is that of pacta sunt servanda, which requires ensuring effective application of the provisions of a treaty in the domestic legal system of the States Party. [FN75] (infra 142)

[FN75] Cf., "Five Pensioners" Case, supra note 4, para. 164; Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 112; and Trujillo Oroza Case, Reparations, supra note 30, para. 96.

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118. Pursuant to the general principles of law and as follows from Article 27 of the 1969 Vienna Convention on the Law of Treaties, domestic legal rules or institutions can in no way hinder full application of decisions by international bodies for protection of human rights.

119. It is also appropriate to emphasize that the State has acknowledged its international responsibility in the instant case for violation of Articles 8 and 25 of the American Convention, which protect the rights to fair trial and to judicial protection, respectively, to the detriment of Walter David Bulacio and his next of kin (supra 31-38). Furthermore, this Court has deemed proven (supra 69.C.6) that despite commencement of several judicial proceedings, to date -over twelve years after the facts- no one has been punished for his responsibility in them. Therefore, there exists a situation of grave impunity.

120. The Court deems that impunity is:

the overall lack of investigation, pursuit, capture, trial and conviction of those responsible for violations of rights protected under the American Convention, as the State has the obligation to combat said situation by all legal means within its power, as impunity fosters chronic recidivism of human rights violations and total defenselessness of the victims and of their next of kin. [FN76]

[FN76] Cf., Juan Humberto Sánchez Case, supra note 4, paras. 143 and 185; Las Palmeras Case, Reparations, supra note 5, para. 53.a); and El Caracazo Case, Reparations, supra note 5, paras. 116 and 117.

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121. In light of the above, it is necessary for the State to continue and conclude the investigation of the facts and to punish those responsible for them. The next of kin of the victim must have full access and the capacity to act at all stages and levels of said investigations, pursuant to domestic legislation and the provisions of the American Convention. The results of the aforementioned investigations must be made known publicly, for Argentinean society to know the truth about the facts (supra 96).

B) GUARANTEES OF NON-RECIDIVISM OF INJURIOUS ACTS

122. Pursuant to the requests by the parties, specifically the second clause of the agreement they signed, this Court will state some considerations regarding the conditions of detention of children and, specifically, imprisonment of children.

123. It is appropriate to mention that:

[…]
THE GOVERNMENT, THE COMMISSION AND THE REPRESENTATIVE OF THE FAMILY, ask[ed] the Honorable Inter-American Court of Human Rights to rule on the matters of law discussed in this case, regarding application of Article 7 of the American Convention on Human Rights; in the framework of the conclusions of the Honorable Inter-American Court of Human Rights in its Advisory Opinion Nº 17.
[…]

124. As has been pointed out previously, the Court recognizes the existence of the authority, and even the obligation, of the State to "guarantee its security and to maintain public order." [FN77] Nevertheless, the power of the State in this matter is not unlimited; its actions are subject to respect for the fundamental rights of individuals under its jurisdiction and observance of procedures according to the Law. [FN78]

[FN77] Cf., Juan Humberto Sánchez Case, supra note 4, para. 86; Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 101; and Bámaca Velásquez Case, supra note 30, para. 174; and Durand and Ugarte Case, supra note 30, para. 69. Vid., likewise, El Caracazo Case, supra note 3, para. 127.
[FN78] Cf., Juan Humberto Sánchez Case, supra note 4, para. 86; Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 101; and Bámaca Velásquez Case, supra note 30, para. 174. Likewise, Cf., Eur. Court H.R., Ribitsch v. Austria. Judgment of 4 December 1995, Series A No. 336, para. 38; and Eur. Court H.R., Tomasi v. France. Judgment of 27 August 1992, Series A No. 214-A, para. 115.
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125. With respect to the power of the State to detain persons under its jurisdiction, this Court has pointed out, analyzing Article 7 of the American Convention, that there are material and formal requirements that must be observed in applying a measure or punishment that involves imprisonment:

no one may be imprisoned for causes, cases or circumstances other than those defined by law (material aspect), but, also, strictly subject to procedures objectively defined in the law (formal aspect). [FN79]

[FN79] Cf., Juan Humberto Sánchez Case, supra note 4, para. 78; Bámaca Velásquez Case, supra note 30, para. 139; and Durand and Ugarte Case, supra note 30, para. 85.
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126. Detainees "have the right to live in conditions of detention that are compatible with their personal dignity and the State must guarantee the right to life and to humane treatment." [FN80] The Court has determined that the State, being responsible for detention centers, is the guarantor of these rights of the detainees, which involves, among other things, the obligation to explain what happens to persons who are under its custody. State authorities exercise total control over persons under their custody. The way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability; [FN81] this guarantee function of the State is especially important when the detainee is a minor. This circumstance gives the State the obligation to exercise its function as guarantor taking all care required by the weakness, the lack of knowledge, and the defenselessness that minors naturally have under those circumstances.

[FN80] Cf., Cantoral Benavides Case, supra note 30, para. 87; Durand and Ugarte Case, supra note 30, para. 78; and Castillo Petruzzi et al. Case, supra note 30, para. 195.
[FN81] Cf. Eur. Court HR, Iwanczuk v. Poland (App. 25196/94) Judgment of 15 November 2001, para. 53.

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127. Vulnerability of the detainee worsens when the detention is illegal or arbitrary. Then the person is in a situation of complete defenselessness, which causes a definite risk of abridgment of other rights, such as those to humane and decent treatment. [FN82] The State must provide a satisfactory explanation for what has happened to a person whose physical conditions were normal when custody began, [FN83] and during it or at the end of it they worsened. The State is also "under the obligation to create the necessary conditions for any remedy [in favor of the detainee] to be able" to attain effective results. [FN84] This Court has emphasized that solitary confinement of the detainee must be exceptional, as it causes him or her moral suffering and psychological disturbances, as it places the detainee in an especially vulnerable situation and increases the risk of aggression and arbitrary treatment in prisons, [FN85] and because it endangers strict observance of due legal process.

[FN82] Cf., Juan Humberto Sánchez Case, supra note 4, para. 96; Bámaca Velásquez Case, supra note 30, para. 150; and Cantoral Benavides Case, supra note 30, para. 90.
[FN83] Cf., Juan Humberto Sánchez Case, supra note 4, para. 100. Likewise, Cf., Eur. Court HR, Salman v. Turkey judgment of 27 June 2000, Reports of Judgments and Decisions 2000-VII, para. 98; Eur. Court HR, Timurtas v. Turkey judgment of 13 June 2000, Reports of Judgments and Decisions 2000-VI, para. 82; Eur. Court HR, Selmouni v. France judgment of 28 July 1999, Reports of Judgments and Decisions 1999-V, para. 87; Eur. Court HR, Ribitsch v. Austria, supra note 78, para. 34; and Eur. Court H. R., Case of Tomasi v. France, supra note 78, paras. 108-110.
[FN84] Cf., Juan Humberto Sánchez Case, supra note 4, para. 85; Bámaca Velásquez Case, supra note 30, para. 194; and "White Van" Case (Paniagua Morales et al.), supra note 30, para. 167.
[FN85] Cf., Bámaca Velásquez Case, supra note 30, para. 150; Cantoral Benavides Case, supra note 30, para. 82; and "Street Children" Case (Villagrán Morales at al.), supra note 69, para. 164.

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128. Likewise, the detainee and those with legal custody or representation of the detainee have the right to be informed of the causes and reasons for his or her detention at the time it occurs, which "constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individuals right to defense" [FN86] and it also contributes, in the case of a minor, to lessen the impact of detention insofar as possible.

[FN86] Cf., Juan Humberto Sánchez Case, supra note 4, para. 82.

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129. Another measure that seeks to prevent arbitrary treatment or illegality is immediate judicial control, taking into account that under the rule of law the judge must guarantee the rights of the detainee, authorize taking precautionary or coercive measures, when strictly necessary, and generally seek a treatment that is consistent with the presumption of innocence in favor of the accused until his or her responsibility has been proven. "[A]n individual who has been imprisoned with no sort of judicial control must be set free or immediately brought before a judge, as the essential content [of said] Article 7 of the American Convention is protection of the liberty of the individual against interference by the State." [FN87]

[FN87] Cf., Juan Humberto Sánchez Case, supra note 4, para. 84; and Castillo Petruzzi et al. Case, supra note 30, para. 108. Likewise, Cf., Eur. Court H. R., Brogan and Others v. The United Kingdom, decision of 23 March 1988, Series A no. 145-B, paras. 58-59, 61-62.

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130. The detainee also has the right to notify a third party that he or she is under State custody. This notification can be, for example, to a relative, an attorney and/or a consul, as may be the case. The right to contact a relative becomes especially important when detainees are minors. In this scenario, the authority carrying out the detention and in charge of the detention place for the minor must immediately notify the next of kin or, otherwise, their representatives for the minor to receive timely assistance from the person notified. In case of consular notification, the Court has pointed out that the consul "may assist the detainee with various defense measures, such as providing or retaining legal representation, obtaining evidence in the country of origin, verifying the conditions under which the legal assistance is provided and observing the conditions under which the accused is being held while in prison." [FN88] Notification regarding the right to establish contact with a relative, an attorney and/or consular information, must be made at the time the accused is imprisoned, [FN89] but in the case of minors it is necessary to take such measures as may be required for notification to effectively take place. [FN90] In case of notification to an attorney it is especially important for the detainee to be able to meet privately with him or her, [FN91] as an inherent act in the detainee's right to defense.

[FN88] Cf., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99, of October 1, 1999. Series A No. 16, para. 86.

[FN89] Cf., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, supra note 88, para. 106.
[FN90] Cf., Council of Europe. Committee on the Prevention of Torture. 2nd General Report on the CPT´s activities covering the period I January to December 1991, paras. 36-43.
[FN91] Cf., Cantoral Benavides Case, supra note 30, paras. 127 and 128; and Castillo Petruzzi et al., supra note 30, para. 139, 141 and 142.
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131. The detainees must be examined and given medical care, preferably by a physician chosen by themselves or by those who have their legal custody or representation. Results of any medical examination ordered by the authorities –and which must not be conducted in the presence of the police authorities- must be delivered to the judge, the detainee and his attorney, or to him and whoever exercises custody or representation of the minor according to the law. [FN92] The Court has stated that deficient medical attention of a detainee violates Article 5 of the American Convention. [FN93]

[FN92] Cf., Council of Europe. Committee on the Prevention of Torture. 9th General Report [CPT/Inf (99), 12], paras. 37-41.
[FN93] Cf., Cantoral Benavides Case, supra note 30, paras. 85 and 106. Likewise, Cf., Council of Europe. Committee on the Prevention of Torture, European Union. 9th General Report [CPT/Inf (99), 12], paras. 33-34.
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132. Police detention centers must meet certain minimum standards [FN94] that ensure respect for the rights and guarantees set forth in the paragraphs above. As this Court has recognized in previous cases, there must be a record of detainees to enable control of legality of detentions. [FN95] This requires entry, among other data, of: identification of the detainees, cause for detention, notification to the competent authority, and to those representing them, exercising custody or acting as defense counsel, if applicable, and the visits they have paid to the detainee, the date and time of entry and release, information given to the minor and to other persons regarding the rights and guarantees of the detainee, record of signs of beating or mental illness, transfers of the detainee, and meal schedule. The detainee must also sign and, if he or she does not, there must be an explanation of the reason. The defense counsel must have access to this file and, in general, to actions pertaining to the charges and the detention.

[FN94] Cf., Eur. Court HR, Dougoz v. Greece Judgment of 6 March 2001, Reports of Judgments and Decisions 2001-II, paras. 46 and 48. Council of Europe. Committee on the Prevention of Torture, European Union. 9th General Report [CPT/Inf (99), 12], paras. 33-34.
[FN95] Cf., Juan Humberto Sánchez Case, supra note 4, para. 189; and "White Van" Case (Paniagua Morales et al.), Reparations, supra note 30, para. 203.
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133. Walter David Bulacio was 17 years old when the Argentine Federal Police detained him. The Court set forth in its Advisory Opinion OC-17 that "[f]inally, taking into account

international norms and the criterion upheld by the Court in other cases, 'child' refers to any person who has not yet turned 18 years of age." [FN96] In this regard, the Court points out that the instant case is especially grave because the victim is a child, whose rights are protected not only by the American Convention, but also by numerous international instruments, widely accepted by the international community, prominently including the Convention on the Rights of the Child. These instruments establish the duty of the State to adopt special protection and assistance measures in favor of children under their jurisdiction.

[FN96] Cf., Juridical status and human rights of the child, supra note 4, para. 42.

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134. With respect to protection of the rights of children and adopting measures to attain said protection, the ruling principle is that of the highest interest of the child, based on "the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential." [FN97]

[FN97] Cf., Juridical status and human rights of the child, supra note 4, para. 56.

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135. In this regard, several specific considerations have been made regarding detention of children, which as this Court has stated and is recognized in various international instruments, must be exceptional and for the briefest time possible. [FN98]

[FN98] Cf., Article 37(b) of the Convention on the Rights of the Child; and rules 13 and 19 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985).

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136. To safeguard the rights of children detainees, and especially their right to humane treatment, it is indispensable for them to be separated from adult detainees. In addition, as this Court has established, those in charge of detention centers for children who are offenders or accused must be duly trained for the performance of their tasks. [FN99] Finally, the right of detainees to communicate with third parties, who provide or will provide assistance and defense, goes together with the obligation of the State agents to immediately communicate to said persons the minor's detention, even if the minor has not requested it. [FN100]

[FN99] Cf., Juridical status and human rights of the child, supra note 4, para. 78.
[FN100] Cf., Council of Europe. Committee on the Prevention of Torture, 9th General Report [CPT/Inf (99) 12], para. 21.

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137. The Court deems proven that at the time of the facts there were police practices in Argentina, including the so-called razzias, detentions to verify identity and detentions under police edits on misdemeanors. Memorandum 40 authorized police officers to decide whether or not they notified the Juvenile Judge regarding children or adolescents detained (supra 69.A.1). Razzias are incompatible with respect for fundamental rights, including presumption of innocence, existence of a court order for detention –except in situations of flagrancy- and the obligation to notify those in charge of the minors.

138. The State must respect the right to life of all persons under its jurisdiction, enshrined in Article 4 of the American Convention. This obligation expresses itself in special modes in the case of minors, taking into account the provisions regarding protection of children set forth in the American Convention and in the Convention on the Rights of the Child. The role of the State as guarantor with respect to this right carries with it the obligation to prevent situations that might lead, by action or omission, to negatively affect it. As this Court stated previously (supra 110-121) and as it pertains to the concrete case, if Walter David Bulacio was detained in good health and subsequently died, the State is under the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, by supplying valid evidence. [FN101] In its role as guarantor, the State does in fact have the responsibility to guarantee the rights of individuals under its custody as well as that of supplying information and evidence pertaining to what has happened to the detainee. [FN102]

[FN101] Cf., Juan Humberto Sánchez Case, supra note 4, para. 100. Likewise, Cf., Eur. Court HR, Salman v. Turkey, supra note 83, para. 98; Eur. Court HR, Timurtas v. Turkey, supra note 83, para. 82; Eur. Court HR, Selmouni v. France, supra note 83, para. 87; Eur. Court HR, Ribitsch v. Austria, supra note 78, para. 34; and Eur. Court H. R., Case of Tomasi v. France, supra note 78, paras. 108-110.

[FN102] Cf., Juan Humberto Sánchez Case, supra note 4, para. 111; Durand and Ugarte Case, supra note 30, para. 65; and Cantoral Benavides Case, supra note 30, para. 55. The European Court has extensive case law along similar lines: Eur. Court HR, Aksoy v. Turkey. judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, para. 61; Eur. Court HR, Salman v. Turkey, supra note 83, para. 98; Eur. Court HR, Timurtas v. Turkey, supra note 83, para. 82; Eur. Court HR, Selmouni v. France, supra note 83, para. 87; Eur. Court HR, Ribitsch v. Austria, supra note 78, para. 34; and Eur. Court H. R., Case of Tomasi v. France, supra note 78, paras. 108-111.

C) ADJUSTMENT OF DOMESTIC PROVISIONS TO THE PROVISIONS OF THE AMERICAN CONVENTION

139. With respect to the measures of reparation requested pertaining to Argentinean laws and regulations, the Court takes note of the efforts made by the State subsequent to the facts in the instant case (supra 108.b), to adjust its domestic system to the requirements of its international obligations regarding this matter.

140. A customary principle of international law establishes that a State that has ratified a human rights treaty must make such amendments to its domestic legislation as may be necessary to ensure full compliance with the obligations undertaken. [FN103]

[FN103] Cf. "Five Pensioners" Case, supra note 4, para. 164; Cantos Case, supra note 6, para. 59; and Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 111.

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141. Pursuant to Article 2 of the American Convention, the States Party are under the obligation to adopt, pursuant to their constitutional procedures and the provisions of this Convention, such legislative or other measures as may be necessary to make those rights and liberties, protected under said Convention, effective.

142. The Court has pointed out several times before that this provision places the States Party under the general obligation to adjust their domestic legislation to the provisions of the Convention itself, to thus guarantee the rights enshrined in the Convention. Domestic legal provisions to this end must be effective (the principle of effet utile), which means that the State must adopt such measures as may be necessary for actual compliance with what is set forth in the Convention.

143. The general duty set forth in Article 2 of the American Convention requires adoption of two types of measures: on the one hand, elimination of all kinds of provisions and practices that breach guarantees set forth in the Convention; on the other hand, adoption of provisions and development of practices that lead to effective observance of said guarantees. [FN104]

[FN104] Cf. "Five Pensioners" Case, supra note 4, para. 165; Cantos Case, supra note 6, para. 61; and Hilaire, Constantine and Benjamin et al. Case, supra note 5, para. 113.

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144. In the framework of the general obligation set forth in Article 2 of the Convention, the Court accepts the terms of the agreement among the parties to constitute a consultation mechanism, "with the aim, as appropriate, of adjusting and modernizing domestic provisions with respect to matters pertaining to [detention conditions for children], for which purpose experts and other civil society organizations will be summoned," to propose to the appropriate bodies provisions aiming to update and modernize domestic provisions.

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145. Furthermore, as it has ordered several times before, [FN105] the Court finds that, as a measure of satisfaction, the State must publish in the Official Gazette, once only, chapter VI and the operative part of the instant Judgment.

[FN105] Cf. Juan Humberto Sánchez Case, supra note 4, para. 188; Las Palmeras Case, Reparations, supra note 5, para. 75; and El Caracazo Case, Reparations, supra note 5, para. 128.

XIII. LEGAL COSTS AND EXPENSES

Arguments of the representatives of the next of kin of the victim

146. The representatives asked the Court to order the State to pay legal expenses and costs, including those for two attorneys representing them in the domestic legal proceedings. This adds up to US$50,000.00 (fifty thousand United States dollars) each. With respect to the bodies intervening in the international proceedings, both before the Inter-American Commission and before the Court, they requested the following amounts: for CELS, US$15,000.00 (fifteen thousand United States dollars); for CEJIL, US$10,000.00 (ten thousand United States dollars); and for CORREPI, US$15,000.00 (fifteen thousand United States dollars).

Arguments of the Commission

147. The Commission asked the Court to order the State to pay the expenses and costs generated by processing of the case, both domestically and before the inter-American system, based on the following criteria:

a) the fees of attorneys María del Carmen Verdú and Daniel A. Stragá for their actions before the Argentinean and international courts during a ten-year period, as well as expenses for phone calls, photocopies, mail services, travel to Washington, D.C. and Costa Rica, are estimated at US$50,000.00 (fifty thousand United States dollars) for each attorney, adding up to US$100,000.00 (one hundred thousand United States dollars); and
b) the fees for the attorneys of CELS, CEJIL and CORREPI for their participation in the case once it began under international jurisdiction, are as follows: for the attorneys of CORREPI, US$ 11,000.00 (eleven thousand United States dollars); for the attorneys of CELS, US$ 11.100.00 (eleven thousand one hundred United States dollars) and for the attorneys of CEJIL, US$ 4.050.00 (four thousand and fifty United States dollars).

Arguments of the State

148. The State asked the Court to take into account the decision in the Alobotoe et al. Case, in that, considering that the State had explicitly acknowledged its international responsibility and had not obstructed the procedure to set reparations, the Commission's request to order the State to pay the costs was dismissed.

149. Alternatively, the State requested that to establish costs and expenses it take into account the decision in the Castillo Páez Case, regarding judicious assessment of the specific scope of the legal costs, considering to this end their timely verification.

Considerations of the Court

150. As the Court has already stated several times before, [FN106] legal costs and expenses are included under the concept of reparation set forth in Article 63(1) of the American Convention, in view of the fact that the actions carried out by the next of kin of the victim to establish his whereabouts and, subsequently, to obtain justice both under domestic and international jurisdiction, involve expenses that must be compensated when the State is found to be internationally responsible in a judgment against it. With respect to the reimbursement, it is for the Court to judiciously assess the amount, which includes expenses incurred before the authorities under domestic jurisdiction and those incurred in the proceedings before the inter-American system, taking into account the certification of expenses made, the circumstances of the specific case, and the nature of international jurisdiction for protection of human rights. [FN107] This assessment can be based on the principle of equity and assessing the expenses stated by the parties, insofar as their quantum is reasonable. [FN108]

[FN106] Cf., Juan Humberto Sánchez Case, supra note 4, para. 193; Las Palmeras Case, Reparations, supra note 5, para. 82; and El Caracazo Case, Reparations, supra note 5, para. 130.
[FN107] Cf., Juan Humberto Sánchez Case, supra note 4, para. 193; "Five Pensioners" Case, supra note 4, para. 181; and Cantos Case, supra note 6, para. 72.
[FN108] Cf., Juan Humberto Sánchez Case, supra note 4, para. 193; "Five Pensioners" Case, supra note 4, para. 181; and Cantos Case, supra note 6, para. 72.

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151. In the instant case, the Court notes that there is a discrepancy between the Inter-American Commission and the representatives of the next of kin of the victim regarding legal costs and expenses. On the one hand, the Commission requested payment of certain amounts in its January 4, 2002 brief on reparations (supra 18). In it, the Commission pointed out that "continuation of the processing of the case before the [...] Court will require new legal costs and expenses in the near future [that] should also receive [...] compensation," but in the brief with its final arguments, on July 4, 2003 (supra 29), it ratified the amounts requested on January 4, 2002. In their July 4, 2003 brief with their final arguments (supra 29), the representatives, in turn, demanded substantially higher amounts than those requested by the Commission with regard to legal costs and expenses, pointing out that "continuation of the processing of the case before the [...] Court has required new legal costs and expenses." Finally, the Court notes that neither the Commission nor the representatives supplied receipts or vouchers to substantiate their claims regarding this aspect of the compensation.

152. The Court deems it equitable to order payment of US$40,000.00 (forty thousand United States dollars) for legal costs and expenses in the domestic proceedings and in the international human rights proceedings. Payment must be distributed as follows: a) US$12,000.00 (twelve thousand United States dollars) to María del Carmen Verdú; b) US$12,000.00 (twelve thousand United States dollars) to Daniel A. Stragá; c) US$7,000.00 (seven thousand United States dollars) to CORREPI; d) US$7,000.00 (seven thousand United States dollars) to CELS; and e) US$2,000.00 (two thousand United States dollars) to CEJIL.

153. This Court deems that to further the proceedings regarding investigation of the facts, the next of kin of the victim will need to incur expenses under domestic jurisdiction, and for this it grants in equity US$5,000.00 (five thousand United States dollars) to Graciela Rosa Scavone.

XIV. METHOD OF COMPLIANCE

Arguments of the representatives of the next of kin of the victim

154. With respect to the mode of compliance with the reparations claimed, the representatives requested the following:

a) that the State pay compensation and adopt the other measures ordered by the Court, within six months of the date it receives notice of the judgment on reparations issued by the Court;
b) that payment of compensation be made directly to the victims or to their next of kin who are adults or their heirs;
c) that said payment be made in United States dollars or an equivalent sum, in cash and in national Argentinean currency, at its exchange rate with respect to the United States dollar on the day before the payment is made;
d) that payment of compensation be exempted from all currently existing taxes and those that may be decreed in the future; and
e) that if the State should be in arrears, it pay interest on the amount owed, according to the interest rate for arrearages in the Argentinean banking system.

The representatives also pointed out, with respect to the observation of the State that as a result of the adoption of various economic provisions there has been a strong devaluation of the Argentine currency vis-à-vis that of the United States, that it "reaffirm[ed] that [it] does not seek to obtain undue enrichment, and therefore [it] wish[ed] to express [its] intention to submit to whatever the [...] Court deems fair as regards updating of the amount of compensation."

Arguments of the Commission

155. The Commission endorsed the requests of the representatives regarding mode of compliance with the measures of reparation.

Arguments of the State

156. With respect to the amounts requested by the representatives of the next of kin of the alleged victim and the Inter-American Commission, the State pointed out that:

a) they are expressed in United States dollars, despite the fact that at the time of filing of the brief on reparations, Convertibility Law No. 23,928 was in force in Argentina, and it established, among other things, parity between Argentinean currency and the United States dollar. Said law was annulled on January 6, 2002 by Law No. 25,561, and Argentinean currency underwent devaluation with respect to United States currency;

b) comparison between the claim made in the instant case and others being processed under domestic jurisdiction, which have been affected by the aforementioned monetary devaluation, would demonstrate inequality; and
c) if the amounts claimed were to remain the same and at the exchange rate set in the brief on reparations, the amounts claimed would be excessive.

Considerations of the Court

157. To comply with the instant Judgment, the State must pay the compensations and reimbursement of legal costs and expenses within six months from the date it receives notice of the instant Judgment.

158. Pursuant to its case law, [FN109] the State can fulfill its pecuniary obligations by payment in United States dollars or an equivalent amount in Argentinean currency, using for this calculation the exchange rate between both currencies in the New York Exchange, in the United States of America, the day before the payment.

[FN109] Cf. Juan Humberto Sánchez Case, supra note 4, para. 197; "Five Pensioners" Case, supra note 4, para. 183; Las Palmeras Case, Reparations, supra note 5, para. 92; El Caracazo Case, Reparations, supra note 5, para. 139; Trujillo Oroza Case, Reparations, supra note 30, para. 137; Bámaca Velásquez Case, Reparations, supra note 30, para. 100; Durand and Ugarte Case, Reparations, supra note 55, para. 28; Cantoral Benavides Case, Reparations, supra note 30, para. 95; Barrios Altos Case. Reparations (Art. 63(1) American Convention on Human Rights). November 30, 2001 Judgment. Series C No. 87, para. 40; Mayagna (Sumo) Awas Tingni Community Case, supra note 4, para. 170; Cesti Hurtado Case, Reparations, supra note 30, para. 76; "Street Children" Case (Villagrán Morales at al.), Reparations, supra note 30, para. 119; "White Van" Case (Paniagua Morales et al.). Reparations, supra note 30, para. 225; Blake Case, Reparations, supra note 60, para. 71; Suárez Rosero Case, Reparations, supra note 47, para. 109; Castillo Páez Case, Reparations, supra note 26, para. 114; Loayza Tamayo Case, Reparations, supra note 47, para. 188; Garrido and Baigorria Case, Reparations, supra note 47, para. 39; Caballero Delgado and Santana Case, Reparations, supra note 47, para. 31; Neira Alegría et al. Case, Reparations, supra note 47, para. 64; and El Amparo Case, Reparations, supra note 47, para. 45.

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159. Payment of the amount for pecuniary and non-pecuniary damages, as well as legal costs and expenses set forth in the instant Judgment, cannot be subject to currently existing taxes or levies or to any decreed in the future. In addition, if the State were to be in arrears, it must pay interest on the amount owed, according to the interest rate for arrearages in the Argentinean banking system. Finally, if for any reason it were not possible for the beneficiaries to collect the respective payments within twelve months, the State must deposit the respective amounts in the name of said beneficiaries in an account or certificate of deposit, at a solid financial institution, in United States dollars or their equivalent in Argentinean currency, under the most favorable conditions allowed by banking laws and practices. If after ten years the payment has not been claimed, the amount will return to the State together with the interest accrued.

160. With respect to the compensation ordered in favor of the children Tamara Florencia and Matías Emanuel Bulacio, the State must deposit the amounts in their name in an investment in a solid Argentinean banking institution, in United States dollars or their equivalent in Argentinean currency, within six months time, and under the most favorable financial conditions allowed by banking laws and practices while they are minors. If after five years from when said persons attain majority the compensation has not been claimed, the capital and interest earned will be distributed proportionally among the other beneficiaries of the reparations.

161. The Court reserves the authority to monitor integral compliance with the instant Judgment. The international proceedings will only be closed once the State has faithfully complied with the provisions of the instant decision.

XV.

4) OPERATIVE PARAGRAPHS

162. Now therefore,

THE COURT,

DECIDES:

unanimously,

1. to admit the acknowledgment of international responsibility made by the State.
2. to approve the February 26, 2003 agreement, under the terms of the instant Judgment, on the merits and some aspects of reparations, and the March 6, 2003 explanatory document regarding that agreement, both of them signed by the State, the Inter-American Commission on Human Rights and the next of kin of the victim and their legal representatives.

DECLARES THAT:

3. pursuant to the terms of the acknowledgment of international responsibility made by the State, it violated the rights enshrined in Articles 4, 5, 7 and 19 of the American Convention on Human Rights to the detriment of Walter David Bulacio, and the rights enshrined in Articles 8 and 25 also of the American Convention on Human Rights to the detriment of Walter David Bulacio and his next of kin, all the above in connection with Articles 1(1) and 2 of the American Convention on Human Rights, under the terms of paragraph 38 of the instant Judgment.

AND DECIDES THAT:

4. the State must continue and complete the investigation of all the facts of this case and punish those responsible for them; that the next of kin of the victim must have full access and be able to act, at all stages and levels of said investigations, pursuant to domestic legislation and the provisions of the American Convention on Human Rights; and that the results of the

investigations must be publicly disseminated, under the terms set forth in paragraphs 110 to 121 of the instant Judgment.

5. the State must guarantee non-recidivism of facts such as those of the instant case, adopting such legislative and any other measures as may be necessary to adjust the domestic legal system to international human rights provisions, and to make them fully effective, pursuant to Article 2 of the American Convention on Human Rights, under the terms of paragraphs 122 to 144 of the instant Judgment.

6. the State must publish in the Daily Gazette, once only, chapter VI and the operative section of this Judgment, under the terms of paragraph 145 of this Judgment.

7. the State must pay the total sum of US$124,000.00 (one hundred and twenty-four United States dollars) or its equivalent in Argentinean currency, as compensation for pecuniary damage, distributed as follows:

a) US$110,000.00 (one hundred and ten thousand United States dollars) or their equivalent in Argentinean currency to be paid to Graciela Rosa Scavone under the terms of paragraphs 85, 87, 88, 89, 157 to 159 of the instant Judgment; and

b) US$14,000.00 (fourteen thousand United States dollars) or their equivalent in Argentinean currency, to be distributed equally between María Ramona Armas de Bulacio and Lorena Beatriz Bulacio, under the terms of paragraphs 88 and 157 to 159 of the instant Judgment.

8. the State must pay the total sum of US$210,000.00 (two hundred ten thousand United States dollars) or their equivalent in Argentinean currency, as compensation for non-pecuniary damages, distributed as follows:

a) US$114,333.00 (one hundred and fourteen thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to be paid to Graciela Rosa Scavone under the terms of paragraphs 95 to 104 and 157 to 159 of the instant Judgment;

b) US$44,333.00 (forty-four thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to be paid to María Ramona Armas de Bulacio under the terms of paragraphs 95 to 104 and 157 to 159 of the instant Judgment;

c) US$39,333.00 (thirty-nine thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to be paid to Lorena Beatriz Bulacio under the terms of paragraphs 95 to 104 and 157 to 159 of the instant Judgment; and

d) US$12,000.00 (twelve thousand United States dollars), or their equivalent in Argentinean currency, to be distributed in equal parts between the children Matías Emanuel and Tamara Florencia Bulacio under the terms of paragraphs 104, 157 to 160 of the instant Judgment.

9. the State must pay the total sum of US$40,000.00 (forty thousand United States dollars), or their equivalent in Argentinean currency, for legal costs and expenses, under the terms of paragraphs 152 and 157 to 159 of the instant Judgment.

10. the State must pay the compensations and the reimbursement of legal costs and expenses ordered in the instant Judgment within six months of the date it receives notice of this Judgment.

11. compensation for pecuniary damages, non-pecuniary damages, and legal costs and expenses set forth in the instant Judgment cannot be subject to currently existing or future taxes, liens or levies.

12. if the State were to be in arrears, it must pay interest on the amount owed according to the interest rate for arrearages in the Argentinean banking system.

13. compensation ordered in favor of the children, Tamara Florencia and Matías Emanuel Bulacio, must be deposited by the State in their name in an investment fund at a solid Argentinean banking institution, in United States dollars or their equivalent in Argentinean currency, within six months, and under the most favorable financial conditions allowed by banking laws and practices while they are minors, pursuant to the provisions of paragraph 160 of the instant Judgment.
14. it will oversee compliance with this Judgment and it will close the instant case once the State has fully complied with the provisions ordered in the instant ruling. Within six months of the date it receives notice of this Judgment, the State must submit a report to the Court on steps taken to comply with it, pursuant to the provisions set forth in paragraph 161 of this Judgment.

Judges Cançado Trindade, García Ramírez and Gil Lavedra informed the Court of their Reasoned Opinions, which accompany this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on September 18, 2002.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez
Hernán Salgado-Pesantes
Oliver Jackman
Alirio Abreu-Burelli

Ricardo Gil-Lavedra
Judge Ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

REASONED OPINION OF JUDGE A.A.CANÇADO TRINDADE*

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* This translations is awaiting its final revision by the author.

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1. By means of the instant Judgment in Bulacio versus Argentina, to which I have concurred with my vote, the Inter-American Court of Human Rights has ruled on a case that clearly reflects the hazards of the human condition and the importance of the realization of justice and guarantees of non-recidivism of facts that are injurious to human rights, as a measure of reparation. Given the importance of the matter addressed by the Court, I feel it imperative to state, in the instant Separate Opinion, my personal reflections on it.

2. As stated in the proceeding before the Inter-American Court, the father and mother, son and daughter, constituted a family, like so many others, of simple and hardworking people, [FN1] and, quite probably, happy perhaps without being aware of it. They lived their daily routine, joined by ties of affection that make life more worth living. This unburdened and unmysterious daily life lasted until the day in which destiny made this united family, well reconciled with life, face a harsh test.

[FN1] Cf. Inter-American Court of Human Rights (IACtHR), Transcripción de la Audiencia Pública en el caso Bulacio versus Argentina (held at the seat of the Court on March 6 and 7, 2003), pp. 7-8, and cf. pp. 10-12 (internal circulation).

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3. One night the son, on his way to a music concert, was caught in a massive detention and beaten by agents of the public authority. When he died, a week later, he took with him the expectations that his family had in him, as the first-born son and an excellent student. Grief over the loss, under these circumstances, of the beloved one, made more acute by insensitivity of the public authorities and impunity of those responsible, had a devastating impact on the whole family. It soon became unbearable, to the point that the household disintegrated and the three survivors were thrown into depths of unending sadness.

4. Grief over the irreparable loss led the father to try to flee from reality, leaving behind his home. The attempt to begin a new life, with two children born from a new relationship, did not lessen his grief. He lost his job, and he survived three attempts to commit suicide. After suffering two heart attacks and undergoing a heart operation, he died nine years after the death of his son, from which he never recovered; he was finally able to rest, as he no longer wished to continue living, [FN2] or surviving his beloved son.

[FN2] Cf. IACtHR, Transcripción de la Audiencia Pública..., op. cit. supra n. (1), p. 10.

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5. The daughter, who was very young and saw her brother as a role model, fell into a state of depression, and twice tried to commit suicide. She now lives with her mother, in a state of seclusion, unable to establish new affective relations, to study or to work; she is the custodian of family life, or what is left of it, so that no one else dies. The mother suffered a deep and protracted depression, and today she shares with her daughter the weight of memories of lost happiness, and the passage of days burdened with an inescapable void. Other close relatives – such as the grandmother- also showed patterns of depression.

6. Is this the plot of the recently discovered fragments of a new tragedy by Aeschylus, Sophocles, or Euripides, added to those already constituting that legacy and indelible repository of the teachings of the Ancient Greeks for all humanity? They might well be, but this is instead a contemporary tragedy –that of youth Walter David Bulacio and his family-, one of the many that occur every day in the brutalized world of our times, branded by indiscriminate violence and perpetuated impunity.

7. At the public hearing before the Court, the mother described their suffering as "very tragic," [FN3] as a consequence of which the whole "family truly collapsed," in face of what happened to their beloved son (and brother). [FN4] The circumstances of the instant case, which reveal better than most how fragile the human condition is, pose an inevitable and disturbing question: how can we assess the role of the Law, and of reparations to victims, in a tragic and irreversible situation such as this one? This question leads me to certain personal reflections, which I wish to express in this Separate Opinion, without claiming to have found a fully satisfactory answer to it.

[FN3] IACtHR, Transcripción de la Audiencia Pública..., op. cit. supra n. (1), p. 7.
[FN4] IACtHR, Transcripción de la Audiencia Pública..., op. cit. supra n. (1), p. 11.

I. The Fragility of the Human Condition

8. Human suffering is perpetual, while the facts and the victims change, from one generation to the next. So much so that in the 5th century B.C., in his Oedipus King, [FN5] Sophocles - opposing destiny- clear-sightedly warned that one must never say that one is happy until one has gone over the extreme limit of a life free of grief. Likewise, in his Ajax, Sophocles once again warned that one only knows what one has seen or lived, but no one can foresee what is yet to come nor one's end. [FN6] Like in the Greek tragedies that were the expression of a given historical moment, that of 5th century Athens, the tragedies of our times demonstrate that devastating grief, surrounded by mystery, can invade one's daily life at any moment. Doing so can also affect beloved ones with whom one personally shares harmonious relations, undermining their protection in face of a truly irreparable loss.

[FN5] In the penetrating initial phrase - verses 1529-1530.
[FN6] Verses 1417-1420.

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9. As shown in the instant Bulacio case, premature and violent death of a beloved one, in a family where feelings are valued, entails deep suffering shared by all. Under these circumstances, the fact that a beloved one is no longer there is as if everything were lacking, and it truly is; suddenly, everything is deserted. [FN7] And it has always been so. Tragedy has been present throughout the centuries. And why? Tragedy –this was said many centuries ago- is an imitation of action and of life. [FN8] Truly, for so many human beings who have experienced

utmost adversity (misfortune), life entails tragedy, and tragedy is the imitation of life (the mimesis of the Ancient Greeks). Harsh reality is recreated and incorporated within each person.

[FN7] Ph. Ariès, Morir en Occidente - desde la Edad Media hasta Nuestros Días, Buenos Aires, A. Hidalgo Ed., 2000, p. 77.

[FN8] Aristoteles, Poetica (circa 335-322 a.C.), I-2; VI-27, 30, 32; VII-41; IX-56. The renowned Aristotelian analysis of Greek tragedy (as an imitation of action and of life) was taken up centuries later, especially by 17th and 18th century thinkers.

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10. We do not always understand reality, and we only know certain aspects of it, grasped by the spirit, with the aid of imagination. Thus, everyone has his or her own interpretation of reality, and there is very little that we can know. The Law itself, contrary to positivists' assumptions, still has much to learn from other branches of human knowledge –especially, in my view, from literature and the arts, which prepare us to face the enigmas and mysteries of life, such as the violent death of our beloved ones.

11. The Law involves, in my view, a system not only to regulate human relations but also, based on the values it contains, for emancipation. [FN9] Insofar as it is open to the perennial teachings of literature, it sets itself free from the pretension of legal "scientificity," which removes it from the reality of daily life. It opens itself to humanist values present in literature, and it sets itself against the cold "rationality" of juridical positivism and of allegedly "legal-scientific" analysis. The Law itself thereby expresses, with aid from the humanities, the principles and values that must guide human relations and existence. The Law, thus enriched, establishes close links with the reality of each one's life.

[FN9] A.A. Cançado Trindade, "A Emancipação do Ser Humano como Sujeito do Direito Internacional e os Limites da Razão de Estado," in: Quem Está Escrevendo o Futuro? 25 Textos para o Século XXI, Brasília, Ed. Letraviva, 2000, pp. 99-112.

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12. Tragedy has accompanied human beings over the centuries. It has reflected key traits of human experience and fragility. Human beings have identified with it over the centuries. By consistently evoking grief and compassion, tragedy reveals much regarding human beings and about the hidden depths of life. Human condition –as one can clearly see, for example, in Homer's beautiful epic (and tragic) poem, the Iliad- [FN10], is marked especially by deprivation, and the vision that happiness can hardly be total and lasting, as human beings must endure their own finite nature, [FN11] without knowing what tomorrow has in store for us.

[FN10] From the late 8th or early 7th century B.C.

[FN11] J.M. Redfield, Nature and Culture in the Iliad - The Tragedy of Hector, rev. ed., Durham/London, Duke Univ. Press, 1994, pp. 87-88 and 216-217. – Homer's warriors knew that they would never be in complete control of their own destiny, and they became means, things, in

a senseless struggle for power, incapable even of “submitting their actions to their thoughts.” As Simone Weil noted so perceptively, the terms “opressors and opressed” almost lose their meaning in face of the powerlessness of all before the machinery of war, converted into a machine that destroys spirits and fabricates unawareness; S. Weil, Reflexiones sobre las Causas de la Libertad y de la Opresión Social, Barcelona, Ed. Paidós/Universidad Autónoma de Barcelona, 1995,pp. 81-82, 84 and 130-131. As in Homer’s Iliad, there are no victors nor vanquished ones, they are all taken over by the force, possessed by war, degraded by brutality and massacres; S. Weil, "L'Iliade ou le Poème de la Guerre (1940-1941)", in Oeuvres, Paris, Quarto Gallimard, 1999, pp. 527-552.

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13. In its unending current relevance, tragedy gives the impression that it can happen to anyone, as it actually does, and –as I pointed out in my Separate Opinion in the “Street Children” case (Villagrán Morales et al. versus Guatemala Case, Reparations, 2001, para. 7)- it can happen at any time in life (to children, youths, adults, the elderly). It is, therefore, timeless, in more than one sense. It portrays the extreme fragility of the human condition.

14. In the instant case, as in so many others, the feeling of tragedy has invaded -and has become embedded in- the lives of the survivors. Only one who has experienced tragedy knows what this means. And over the centuries (from the 5th century B.C. to the 21st century) this feeling has been present in all sorts of human thinking. It has been noted that the feeling of tragedy:

"envahit la littérature et la philosophie, il infeste le subconscient. (...) La tragédie, c'est le récit d'une expiation (...). La figure tragique représente l'expiation du péché originel, (...) le péché d'être né. (...) Si vraiment une culpabilité pèse sur nous, (...) si vraiment il n'y a point de rédemption, alors ce n'est pas la mort, c'est la vie qui est l'expiation" [FN12].

[FN12] J.-M. Domenach, Le retour du tragique, Paris, Éd. du Seuil, 1967, p. 279.

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15. In the subject matter of Greek tragedy itself there is a special identification of an as yet indeterminate juridical thinking, still in the process of elaboration, and the coming together of human acts and the designs of divine powers, also known as destiny. [FN13] Despite lacking autonomy and control over his own life, the individual was already affirmed as a legal person in the 5th century B.C., the age of classic tragedies. [FN14]

[FN13] J.-P. Vernant and P. Vidal-Naquet, Mito e Tragédia na Grécia Antiga, São Paulo, Edit. Perspectiva, 1999, pp. 3-4, 21 and 47.
[FN14] Ibid., p. 51.

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16. In the midst of the violence portrayed in the tragedies of the 5th century B.C., there was a noteworthy concern over justice and the law, precisely to end violence. The message was clear,

and it remains current at the start of the 21st century: we must reject violence and tyranny, and we must practice justice [FN15] (cf. infra). It is part of human nature –warned Sophocles in his Filoctetes- to "always be subject to threat and danger." [FN16] The extreme vulnerability and inevitable fragility of human beings must awaken feelings of solidarity in everyone. [FN17]

[FN15] J. De Romilly, La Grèce antique contre la violence, Paris, Éd. de Fallois, 2000, pp. 18-19, 25, 33, 50-51, 55, 63-64, 74-75 y 161-163; and cf. S. Goldhill, Reading Greek Tragedy, Cambridge, University Press, 1999 [reprint], pp. 28-31, 34, 37 and 39-40.
[FN16] Verse 503. – In a similar vein, Euripides, in turn, confessed, in his Hipollytus, that he did not know who, "among mortals," he could sall "happy" (verse 981); and, also as a warning, he added that "painful is life of mortals and their suffering never ends" (verse 190).
[FN17] J. De Romilly, La Grèce antique..., op. cit. supra n. (15), pp. 61-62 and 115-116.

II. From Fragility to Human Solidarity.

17. The Ancient Greeks were able to transform this enormous fragility of human nature into a source for the moral grandeur of human solidarity; their humanism was constructed precisely on the basis of recognition of the extreme fragility of human nature. [FN18] This recognition, in turn, entailed a spirit of human solidarity and development of an awareness of the duty of humanity with respect to victims (of violence and misfortune). [FN19] We express this duty today in the obligation to make due reparations to victims (cf. infra).

[FN18] Ibid., pp. 118, 120 and 122.
[FN19] Ibid., p. 177.

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18. There are different degrees of human suffering, while there are no uniform criteria for its measurement. Each individual is an unfathomable universe in him or herself. There are types of suffering that tend to diminish over time, and some trust the anesthetic effect of the passage of time. There are those who deem that forgetting is a defense against the harsh reality of the facts, as in Thomas Becket's premonition at Canterbury, in face of his imminent suffering:

"You shall forget these things, toiling in the household,
You shall remember them, droning by the fire,
When age and forgetfulness sweeten memory
Only like a dream that has often been told
And often been changed in the telling. They will seem unreal.
Human kind cannot bear very much reality." [FN20]

[FN20] T.S. Eliot, "Murder in the Cathedral" (1935), in The Complete Poems and Plays 1909-1950, N.Y./London, Harcourt Brace & Co., 1980 [reprint], pp. 208-209.

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19. Ultimately, between the constant intrusion of “tomorrow” in one’s every day life, and the fleeting escapism of “yesterday,” “Life's but a walking shadow..." (as the Shakespearean soliloquy in Macbeth regrets). [FN21] Yet how can we deny that there is also suffering that leaves open emotional scars that are indelible and incurable, and that even resist erosion by time? Suffering is the immediate revelation not only of the universal condition of human beings, but also of one’s own awareness. [FN22]

[FN21] Shakespeare, Macbeth (1605-1606); act V, scene V, verse 24.
[FN22] M. de Unamuno, The Tragic Sense of Life, London, Collins/Fontana Libr., 1962 [reprint], pp. 209 and 204.

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20. In point of fact, I cannot see how one could argue that reparations to victims of human rights violations are able to end their suffering. The victims of tragedy are acutely aware, more than anyone else, of the irreparable nature of the loss or damage. As Cornélie, P. Corneille’s character in La Mort de Pompée, stated so precisely, [FN23]

"La perte que j'ai faite est trop irréparable;
La source de ma haine est trop inépuisable;
À l'égal de mes jours je la ferai durer;
Je veux vivre avec elle, avec elle expirer." [FN24]

[FN23] Referring to the death of the husband and its consequences.
[FN24] From 1643-1644; verses 1721-1724.

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21. In effect, how can we consider reparation of damage in face of the tragedy of a whole family destroyed by the violent death of one of its members, the young son (and brother)? What is the true scope and effect of reparations in a situation such as that of the instant case? Contrary to the assumptions of the followers of juridical positivism, it is not irrelevant to invoke, in this context, the teachings of universal literature; this is an area (reparations due to victims) where the Law still seems to be in its early childhood, and it still has much to learn form other branches of human knowledge (psychology, philosophy, humanities in general).

22. Rationalism and so-called “realism” attempted, in vain, to end tragedy; there were unable to, because since times long past human existence has been accompanied by irrationality and brutality. In tragedy there is no visible space for reparations, or “compensations” of various types, that seek to end human suffering. From this angle, the loss is truly irreparable, and one must live with it, with the emptiness. The desperation of Euripides’ Hecuba (423 B.C.)can be expressed in the same manner by mothers who have lost their children to human violence over the centuries:

O my son, child of a luckless mother, what was the manner of thy death?

what lays thee dead at my feet?
Who did the deed? [FN25]

Hecuba's desolation, in the 5th century B.C., can be expressed, precisely in those same terms, at the end of the 20th century and the dawn of the 21st, by the mothers of children victimized by longstanding human brutality in the cases heard by this Court (such as, for example, the instant Bulacio case, or the Castillo Páez case, or the Villagrán Morales et al. case).

[FN25] Verses 909-912.
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23. As I reflected in my Separate Opinion in the Villagrán Morales et al. versus Guatemala case ("Street Children" case, Reparations, 2001),

"Human suffering has a dimension which is both personal and social. Thus, the damage caused to each human being, however humble he might be, affects the community itself as a whole. As the present case discloses, the victims are multiplied in the persons of the surviving close relatives, who, furthermore, are forced to live with the great pain inflicted by the silence, the indifference and the oblivion of the others." (para. 22)

24. To seek to make the consequences of violations cease may seem, in certain cases, wishful thinking. As an expert witness stated at the memorable March 6, 2003 public hearing in the instant Bulacio versus Argentina case, [FN26] while the person who loses his or her spouse becomes a widow or widower, and one who loses a father or a mother becomes an orphan, languages (other than Hebrew) have no similar term to refer to the father or mother who loses a son or daughter. The only term that refers to this situation (in Hebrew) translates into "the idea of a dejectedness of the soul." [FN27]

[FN26] Said public hearing in the Bulacio versus Argentina case is memorable for more than one reason. It will remain in the memory of all those who participated in it, especially, due to the spirit of respect and dignity brought to it by all intervening parties: the representatives of the next of kin of the victim, those of the Inter-American Commission on Human Rights, as well as the agents of the respondent State, all of whose pleadings before the Court showed genuine and equal interest in attaining a satisfactory solution to the case. Said hearing is also, already, part of the history of the Court, as it was the last to be held in the first courtroom (which, with additions to the building of the Court, no longer exists), where the public hearings were held from the early days of the Court until then. For this reason, in closing it, I announced: -"as of the moment I strike the mallet, this room will no longer be a courtroom and it will become part of the history of this Court" (I-ACtHR, Transcripción de la Audiencia Pública..., op. cit. supra n. (1), p. 56). This first great chapter of the history of the functioning of the Court could hardly have had a more moving and appropriate closing than said public hearing in the Bulacio case.
[FN27] Cf. IACtHR, Transcripción de la Audiencia Pública..., op. cit. supra n. (1), pp. 15 and 23 (internal circulation).
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25. This semantic gap is due to the intensity of this grief, which makes the languages avoid giving it a name; grief in certain situations is so intense and unbearable that they "have no name for it". [FN28] It is as if no one dared to describe the condition suffered by those persons. In the conceptual framework of what is called –perhaps inadequately- "reparations," we face a truly irreparable damage. Restitutio in integrum is impossible with respect to violation not only of the fundamental right to life but also, in my view, of other human rights such as the right to humane treatment. [FN29] Under circumstances such as those being considered here –among many others- reparations for human rights violations only provide the victims the means to attenuate their suffering, making it less unbearable, perhaps bearable.

[FN28] Ibid., p. 23 (expert opinion of psychologist Graciela Guilis).
[FN29] A survivor of torture, for example, will never be the same person.

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26. Aeschylus evoked, precisely, "learning through suffering" (to which the chorus refers in his Agamemnon. [FN30]) Reparations thus maintain their significance (cf. infra). They help the survivors live with their grief. And this is a learning process that is renewed every day –but this learning also has its limits. Tragedies, which have survived rationalism, express regret for inhumane treatment and the resulting waste; in tragedies, there is no way to avoid responsibility, and there are no means of compensation. [FN31] Nevertheless, tragedies are also concerned with the need for justice, [FN32] and, from early on, they have also entailed a certain ritual to honor the deceased. [FN33]

[FN30] Verse 178.
[FN31] G. Steiner, The Death of Tragedy, London, Faber, 1961, pp. 128-129, 193 and 354.
[FN32] A central theme in Aeschylus' considerations in Eumenides:one knows the rules, then one must "transform them into justice" (verse 587); and of Euripides' reflection in his Hecuba, obsessed by the idea of justice (verses 349-350, 1115, 1130-1134, and 1371).
[FN33] G. Steiner, op. cit. supra n. (31), p. 355.

III. Reparatio: The Reaction and Intervention of the Law

27. What is the role of the Law in these borderline situations? Who could have foreseen that, when he left his home to attend a music concert, youth Walter David Bulacio was heading toward his death? Who could have foreseen that, when he left his house and as he walked unaware down the street, youth Ernesto Rafael Castillo Páez [FN34] was also heading toward his death? For the parents of Walter David Bulacio, of Ernesto Rafael Castillo Páez, and of so many other youths who have been the fatal victims of violence and about whom we have no information, what meaning can life have in face of this irreparable damage? I simply cannot find an answer to this question within the restricted sphere of the Law, unless we link it to the teachings of the humanities. Regarding the designs of destiny, we have already been warned that:

"in general we are only able to comprehend the deepest and most hidden truths by means of images and metaphors. (...) This hidden power (...) can only lie (...) in the mysterious enigma of our own interior being, since ultimately, the alpha and omega of all existence has its abode within ourselves." [FN35]

[FN34] Cf. Inter-American Court of Human Rights, Castillo Páez versus Perú case, Judgment on the merits, 03.11.1997, paras. 1-92; and Judgment on reparations, 27.11.1998, paras. 1-118.
[FN35] A. Schopenhauer, Los Designios del Destino, Madrid, Tecnos, 1994 [reed.], p. 28.

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28. In face of the agony of those who have been devoured by the force of cruel destiny, the chorus in Greek tragedies laments its fate, but also stating warns and lectures the survivors. However, we do not stop then: there is a point at which the Law does intervene. If, on the one hand, misfortune can be attributed to determinism or fatalism (e.g., leaving home to attend a music concert, without knowing that one is walking toward one's death), on the other hand there is an element of human intervention that cannot be diminished (e.g.,violence that causes the death of defenseless, innocent persons).

29. Not everything is, therefore, the result of acts of the gods or of chance, nor is everything the blind force of destiny; there is also human intervention in the consummation of the tragedy. The fact that Walter David Bulacio (in the cas d'espèce) and Ernesto Rafael Castillo Páez (in the other case heard by the Inter-American Court), in their youthful years of dreams and life projects, suffered shortly before their sacrifice the extreme violence with which human beings are capable of treating each other, is certainly unacceptable.

30. It is here that the Law intervenes, to halt the cruelty with which human beings treat their fellow men or women. In light of this, it is here that the Law intervenes, to affirm its own prevalence over brute force, to attempt to organize human relations on the basis of recta ratio (natural law), to mitigate human suffering, and thus make life less unbearable, or perhaps bearable –understanding that life with suffering, and solidarity, is preferable to non-existence.

31. It is here that the Law intervenes, to reconcile the surviving victims with their fate, to free human beings from brute force and revenge. In classical Greek tragedy, the Law still flourished, in statu nascendi, at the polis, as an emanation of human awareness. The boundaries between destiny and free will were not yet clearly defined, and the legal system of responsibility would only take shape and gradually become institutionalized in a subsequent historical period. In the history of the Law, reparations arise and take on a definite form precisely to leave revenge, private justice, behind. The corrosive power of the latter, destructive of the social fabric itself, is fully expressed in Greek tragedy and, before that, in Homer's impressive Iliad.

32. This is, in my view, the original meaning of reparations, when public justice overcame private justice, and public authority reacted against the violation of human rights, thus providing satisfaction to the victims or their next of kin. The vicious circle and the chain of revenge is broken and overcome: we evolve from Agamemnon's bloodied tunic to the final civic procession

of Euminides, the last work of Aeschylus' trilogy Oresteia. [FN36] Public justice replaces private revenge.

[FN36] On the direction of this evolution see, e.g., C. Rocco, Tragedia e Ilustración - El Pensamiento Político Ateniense y los Dilemas de la Modernidad, Santiago de Chile, Edit. Andrés Bello, 1996, pp. 177-215.

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33. This explains the importance of the realization of justice. The juridical order (both domestic and international) sets itself up to oppose violent acts that breach human rights, to ensure that justice prevails and, thus, to provide satisfaction to the direct and indirect victims. In his work on L'Ordinamento Giuridico, originally published in 1918, the Italian philosopher of the Law, Santi Romano, argued that punishment is not attached to specific juridical provisions, but rather is inherent to the juridical order as a whole, operating as an "effective guarantee" of all subjective rights protected by said order. [FN37]

[FN37] Santi Romano, L'ordre juridique (transl. 2d ed., repr.), Paris, Dalloz, 2002, p. 16.

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34. Without the realization of justice there are not even traces of human solidarity, and Hecuba's expressions of desperation (from the 5th century B.C.) and those of Cornélie (from the 18th century) continue to resound in the void, together with the desperate expressions of all those without justice and who have been victimized by human brutality (in this dawn of the 21st century). Reparations cannot be deprived of their great historical meaning, to overcome private revenge and attain public justice. What we witness today, the reductionist approach that tends to assimilate them to mere pecuniary compensations (indemnifications) for damage suffered, in my view constitutes a regrettable distortion of their true meaning. [FN38]

[FN38] About to become, in contemporary forensic practice in various countries, a regrettable and reprehensible "industry of reparations."

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35. The Law, issuing from and moved by human awareness, provides reparatio (from the Latin reparare, "to dispose once again"); it also intervenes to avoid repetition of the wrong, in other words, to establish, as one of the non-pecuniary forms of reparation of damage resulting from violations of human rights, the guarantee of non-recidivism of the injurious acts. Said guarantee of non-recidivism already has a definite place among the range of forms of reparation for human rights violations.

36. Its importance is undeniable: it is not by chance that, among the operative paragraphs of the instant Judgment of the Inter-American Court on forms of reparation (ns. 4-13), the first are those pertaining to investigation and punishment of those responsible (n. 4) [FN39] and the guarantee of non-recidivism of the injurious facts (n. 5), [FN40] before pecuniary reparations

(operative paragraphs ns. 7-13). [FN41] Justice and guarantees of non-recidivism constitute the reparatio, for the survivors to manage at least to continue their existence or coexistence with the grief already established in their daily lives.

[FN39] And cf. paras. 110-121 of the instant Judgment.
[FN40] And cf. paras. 122-138 of the instant Judgment; and, as regards adjustment of domestic legal provisions to those of the American Convention, also cf. paras. 139-145 of the instant Judgment.
[FN41] This order of priorities is in accordance with the statement by the mother of Walter David Bulacio at the public hearing before the Court, when she highlighted the importance of the realization of justice "so that what happened to [her] son never again happens to a youth (cf. I-ACtHR, Transcripción de la Audiencia Pública..., op. cit. supra n. (1), pp. 11-12), as well as by the representatives of the next of kin of the victim (cf. ibid., pp. 34-35).
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37. Reparatio does not end what happened, the violation of human rights. The wrong was already committed; [FN42] reparatio avoids a worsening of its consequences (due to indifference of the social milieu, due to impunity, due to oblivion). From this perspective, reparatio takes on a dual meaning: it provides satisfaction (as a form of reparation) to the victims, or to their next of kin, whose rights have been abridged, while also reestablishing the legal order weakened by said violations –a legal order erected on the basis of full respect for the inherent rights of the human person. [FN43] The legal order, thus reestablished, requires guarantees of non-recidivism of the injurious facts.

[FN42] Human capacity both to promote good and for evil has not ceased to attract the attention of human reflection over the centuries; cf. F. Alberoni, Las Razones del Bien y del Mal, Mexico, Gedisa Edit., 1988, pp. 9-196; A.-D. Sertillanges, Le problème du mal, Paris, Aubier, 1949, pp. 5-412.
[FN43] As I pointed out in my Separate Concurring Opinion yesterday, with respect to Advisory Opinion No. 18 of the Inter-American Court, on the Legal Status and Rights of Migrants without Documents (on the 17.09.2203), para. 89.
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38. Reparatio disposes once again, reestablishes order in the lives of the surviving victims, but cannot eliminate the pain that is inevitably incorporated into their daily existence. The loss is, from this angle, strictly irreparable. Even so, reparatio is an unavoidable duty of those responsible for rendering justice. In a stage of greater development of human awareness, and therefore of the Law itself, undoubtedly the realization of justice overcomes any and every obstacle, even those derived from the abusive exercise of rules or precepts of substantive law, thus making crimes against human rights inextinguishable –as the Inter-American Court rightly and significantly recognizes in paragraphs 113-118 of the instant Judgment in the Bulacio case. Reparatio is a reaction, in the field of the Law, to human cruelty, expressed in various ways: violence in dealing with other human beings, impunity of those responsible with respect to the public authorities, indifference and oblivion in the social milieu.

39. This reaction of the legal order breached (the substratum of which is precisely respect for human rights) is ultimately moved by the spirit of human solidarity. The latter, in turn, teaches us that oblivion is inadmissible, because its connotation is one of complete lack of solidarity of the living for their deceased ones. Even though "modern" and "post-modern" society stimulate frivolousness (of consumption) and the ephemeral (the present) in vain, they are able to strip human beings of their unavoidable solitude in face of death (that of their beloved ones, and also their own). Death has over the centuries been linked to what is assumed to reveal destiny, and it is especially when facing death that each person becomes aware of his or her individuality. [FN44]

[FN44] Ph. Ariès, op. cit. supra n. (7), pp. 87, 165, 199, 213, 217, 239, and 251.

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40. As the Inter-American Court has stated in the instant Judgment in the Bulacio vs. Argentina case, reparation, thus understood - providing satisfaction to the victims (or their next of kin) and guarantees of non-recidivism of the injurious facts, in the framework of the realization of justice- is undeniably important. Rejection of indifference and oblivion, and guarantees of non-recidivism of the violations, are expressions of solidarity between the victims and the potential victims, in the violent world, empty of values, in which we live. It is, ultimately, an eloquent expression of the ties of solidarity that link the living to their deceased ones. [FN45] Or, more precisely, of the ties of solidarity that join the deceased ones to those who survive them, as if the former were saying to the latter: do not do to others what they did to us and to our surviving parents, so that they and their children can continue to have a simple and happy life, perhaps unknowingly.

[FN45] Regarding these ties of solidarity, see my Separate Opinions in the Bámaca Velásquez versus Guatemala case (Judgments of the Inter-American Court on the merits, on the 25.11.2000, and on reparations, on the 22.02.2002).

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

REASONED CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN THE JUDGMENT ISSUED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE BULACIO V. ARGENTINA CASE ON SEPTEMBER 18, 2003

1. I concur with the members of the Court in the Judgment to which I attach this Separate concurring opinion to specify, from my own perspective, the scope of certain concepts included

in that Judgment, in light of the background and the request submitted jointly by the parties to the Inter-American Court regarding certain points of law and the measures applicable to minors.

2. It is important to point out that the Inter-American Court has had the opportunity to rule on these matters when exercising both its advisory function and its contentious jurisdiction. A recent instance of the former was its August 28, 2002 Advisory Opinion OC-17/2002, on the Juridical status and human rights of the child, in response to a request by the Inter-American Commission on Human Rights. The latter applies to the instant Judgment issued in the Bulacio vs. Argentina Case. The Court is studying other contentious matters also pertaining to issues with respect to minors.

3. Thus, the Inter-American Court has been able to address a prominent theme that today raises numerous questions and controversies, with respect to a large number of inhabitants of the countries of our Continent, where youths are a substantial population. It also addresses a subject regarding which, especially in recent years, there have been innovations stemming from new trends of thought and reflected in various legislative and institutional reforms. This includes the 1989 Convention on the Rights of the Child and other instruments pertaining, specifically, to offenses attributed to minors and the judicial system in charge of hearing this type of cases, such as the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the 1990 United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

4. In this framework, driven by an in-depth modification of the circumstances in which minors live and the actions, in this regard, of social and State bodies, there has been an important evolution of juridical institutions and ideas. We have had to review previous positions and adjust viewpoints and suggestions. I stated this, from my standpoint, in my Concurring opinion to Advisory Opinion OC-17/2002.

5. In that Concurring opinion, I stated the need to go beyond the debate between schools of thought and to arrive at synthetic solutions, adopting the best of each doctrine, that which is beneficial and can therefore be lasting, and thus seek to alleviate the situation of minors and contribute to their true protection and genuine development. In other words, “the time has come to leave behind the false dilemma and recognize the true dilemmas that are present in this field.” “On the one hand, this synthesis would retain the intention of protecting the child, as a person with specific needs for protection, who should be looked after with measures of this type, rather than with the characteristic solutions of the criminal system for adults,” as clearly follows from the 1989 Convention, the Beijing Rules, the Riyadh Directives, and the Tokyo Rules. On the other hand, this synthesis “would include the basic demands of the guarantee-based approach: the rights and guarantees of minors,” which are also reflected, with the liveliest interest, in those international instruments that express the current status of this matter (paras. 24 and 25).

6. The Judgment in the Bulacio vs. Argentina Case mentions the acknowledgment of responsibility by the State and the agreement for a friendly settlement signed on February 26, 2003 by the State, the Inter-American Commission on Human Rights, and the representatives of the next of kin of the victim. These are two converging juridical acts, related to each other,

although their nature is different and each one has specific legal consequences. We should highlight that the Judgment states that said agreement constitutes "a positive contribution to the development of these proceedings and to effectiveness of the principles that inspire the American Convention on Human Rights" (para. 37). Previously, the State adopted a similar position in another contentious matter (Cf. ICHR, Garrido and Baigorria Case, February 2, 1996 Judgment. Series C No. 26, and Reparations (Art. 63(1) of the American Convention on Human Rights), August 27, 1998 Judgment. Series C No. 39). For this reason, in the instant Judgment "[t]he Court highlights the goodwill shown by the State of Argentina before this Court [...] which demonstrates the commitment of the State to respect for and effective exercise of human rights" (para. 37).

7. Acknowledgment of international responsibility encompasses the facts and claims and determines conclusion of the dispute regarding the merits –unless this Court decides otherwise, based on the authority granted to it by Article 54 of the Rules of Procedure of the Inter-American Court of Human Rights, which has not occurred in the instant case- and makes it possible to proceed with the establishment of certain consequences of the facts, as this Judgment does. On the other hand, it is possible to assume that two procedural concepts coincide in an acknowledgment of responsibility, both of them with material repercussions, bearing in mind the scope of said recognition: confession and acquiescence. In point of fact, as stated by Alcalá-Zamora, acquiescence is "an act of disposition, or a waiver of rights:" a renunciation of the right to legal defense (El allanamiento en el proceso penal, EJEA, Buenos Aires, 1962, pp. 129 and ff.). "[C]onfession refers to factual statements and acquiescence refers to legal claims" (Proceso, autocomposición y autodefensa (Contribución al estudio de los fines del proceso), Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 3d ed., Mexico, 1991, p. 96).

8. Nevertheless, for purposes of this case it has been enough for the Court to accept the acknowledgment of responsibility made by the State –set forth in the agreement between the parties and corroborated at the public hearing held by the Court- regarding violation of the various provisions of the American Convention that were mentioned specifically and that include, among others, the right to humane treatment and to life: Articles 2, 4, 5, 7, 8 and 25. Logically, acknowledgment of responsibility means that the State considers that there were, in fact, behaviors of its agents that breached the rights of the victim regarding points such as humane treatment and the right to life. Non-fulfillment of the duty of custody, acknowledged by the State –to which I will refer again, below, paras. 22-24, when I discuss the role of the State as guarantor with respect to persons subject to its jurisdiction and immediate control-, can encompass various behaviors that, both by action and by omission, breach juridical rights set forth in the Convention: a breach that encompasses, for example, humane treatment and the right to life.

9. In any case, the parties have demonstrated their interest in finding this "area for consensus" discussed in contemporary procedural theory, which enables attainment of convenient and agreed-upon solutions –when and insofar as possible-, to resolve the dispute based on the will of the litigants, and not only on the decision of the court as a third party. Opting for this alternative in the process –whether completely setting aside the court proceeding, or making certain acts or stages of this proceeding unnecessary- significantly contributes to the

opening of feasible avenues to attain the goals sought by justice with respect to human rights. There have been other such acts in previous cases, not only in proceedings before the Inter-American Commission, where the possibility of a friendly settlement sponsored by that body of the system exists explicitly, but also during proceedings instituted before the Court.

10. In the agreement signed by the parties, the Court is asked to "decide on the points of law discussed in this case regarding application of Article 7 of the American Convention on Human Rights [which refers to various aspects of the right to personal liberty and its abridgments and restrictions] within the framework set forth by the Honorable Inter-American Court of Human Rights in its Advisory Opinion Nº 17." This request entails –and the Judgment deems it so- the possibility that the Court may issue "considerations regarding the conditions of detention of children and, specifically, imprisonment of children" (para. 122). The starting point for said considerations would be the facts that gave rise to the application –the specific facts that Walter David Bulacio was the victim of-, but their content and significance would go beyond the specific case. Of course, the authority of the Court to examine said issues and to issue a ruling on them stems from Article 2 of the Convention, regarding steps that a State must take to fulfill its human rights treaty obligations.

11. In this regard, the Court itself has set forth its criteria in the aforementioned Advisory Opinion OC-17/2002, which can serve as a reference point for regulations regarding juvenile offenders and other minors subject, for any reason, to protection by the State. The principles and provisions cited in that Opinion, as well as statements therein, provide a diverse set of governing principles that contribute to the establishment of international standards regarding the matter we are discussing. The collegiate body whose establishment is required may take into account said standards to issue such reflections and recommendations as it may deem pertinent.

12. In my view, this constructive request of the parties, contained in the second clause of the February 26, 2003 agreement, does not mean that the State declines its regulatory authority regarding this matter, which originates in the State's own rights and obligations, nor does it impede or limit its carrying out such reforms as it may deem pertinent and that are in accordance with its domestic and international duties, based on the national legal system and the San José Covenant.Surely said reforms will be more extensive and detailed than those set forth, in an illustrative and non-exhaustive manner –since they are human rights provisions, always open to progress-, in the Judgment to which I attach this Opinion. They will also follow the same direction as others already carried out, on which the State has provided information and which are mentioned in the Judgment (para. 108.b). The advisory body to be set up (para. 144) may provide valuable assistance for progress in this area of the legal system and of the respective practices.

13. In its regulations regarding offenses by minors and the respective legal reaction, the State legislates and acts on various aspects of a whole, which is justice rendered by a public authority established on the basis of certain principles and concepts of a democratic society. This expression of justice –or this control function of the State- must not only ensure, as it should, the public interest, but also ensure respect for the legitimate interests and rights of private individuals, in accordance with the Rule of Law. Strictly speaking, said respect is also inherent to the public interest, which would suffer if the dignity of the individual were abridged and his or

her rights denied. The aspects under discussion in this case pertain to the substantive or material and to the procedural issues of justice regarding juvenile offenders –or alleged offenders-. These include those pertaining to coercive measures or detention, as well as executing measures ordered by competent authorities.

14. Once again we must stress that penal or quasi-penal social control, pertaining to minors, is a measure of last resort. The legal definitions of behaviors that justify punishment by the State must refer to actual undue detriment to legally established rights, not merely to situations of alleged risk or danger that lead to suspicions –subject to the discretion of those observing them- that it is possible that a transgression may occur, and on these "grounds" to activate the repressive means of the State. In any case, it is necessary to develop a rational classification of the unlawful behaviors, distributing them in well-substantiated categories, taking into account the different gravity of the offenses and consequently regulating juridical reaction, without incurring in the excessive actions typical of an authoritarian system. Certainly there is a need to prevent behavior that is injurious to legal rights, and the police play this role under the Rule of Law, but said prevention does not authorize unrestricted actions in face of behaviors of youths that do not violate the legal order, or that do so only with scarcely significant or injurious actions that do not constitute crimes and should not entail the treatment and consequences inherent to the latter.

15. The breakdown of limits to repressive action by public authorities and invasion of the natural areas of individuals' liberties –those of minors, in this case- does in fact constitute a serious threat to the Rule of Law. All this leads to the need to respect the sphere of free behavior and to carefully establish, within the legal framework, those actions that are gravely injurious to legal rights, in face of which it is legitimate –pursuant to a criterion of material, not merely formal legitimacy- to activate the punitive function, as opposed to minor offenses, which must be dealt with by other means and instruments, both public and private.

16. In this regard, it is necessary to resort to legitimate means to attain just solutions. This includes proceedings before State bodies, entrusted with the final decision, and the alternative means that remove the hearing and solution of the problem from the sphere of public justice. The principle of guarantees must also prevail in said proceedings, which does not impede State action pursuant to its legitimate purpose and authority, but sets in the hands of private citizens the possibility of broadly exercising the right to defense, with all the powers and actions that it entails.

17. In this setting, even in cases of mere misdemeanors, not of crimes, presumption of innocence must apply, together with the burden of evidence upon the authorities, providing defense counsel from the time of detention of the individual and of arraignment –before he or she makes any statement that might compromise his or her legal situation and determine the outcome of the proceeding-, information on the cause for detention and the rights of the detainee, access to the case file, the possibility of resorting to expedite remedies –especially those pertaining to protection of fundamental rights-, celerity of the proceeding and access to conditional discharge.

18. It is indispensable for the procedural system to establish and ensure various measures of control regarding the conduct and legality of the proceeding and due performance by the

authorities involved in it. Such measures are, essentially, acts and guarantees of due process-. This is especially the case with respect to minors, who are in a situation of special defenselessness and vulnerability and who therefore face a specific and greater risk of abridgment of their fundamental rights and of detriment to their existence, sometimes irreparably.

19. Said controls, operating for specific purposes, always entail the presence and intervention of authorities or private individuals in support of the minors and to represent or protect their rights and interests. In accordance with this set of control measures, the next of kin or representatives or legal guardians of the minor must be immediately notified of his or her detention, as well as his or her attorney –and, in any case, the court-appointed defense counsel who may act immediately-, the consul of the State that he or she is a national of, the judge who must rule on legitimacy of the detention and justification of the proceeding, the physician who will certify the physical and psychological conditions of the minor and oversee the development of his or her situation at the detention center, and the social worker or assistant who will help establish and maintain access to the minor by those who can provide him or her care and protection.

20. Precautionary and coercive measures –first of all, the detention itself- must be organized pursuant to criteria that ensure that it is reasonable, necessary, and proportional, bearing in mind the exceptional nature that any precautionary restriction of rights must have in the legal order of a democratic society. Complaints have often been filed against certain practices of collective detention –called razzias, among other names-, which are based on the unsustainable logic of general charges, independent of individual responsibilities. If restriction of a right must be the consequence of an offense defined by law, and the responsibility of the person is strictly individual, coercive and precautionary means must also be based on actual occurrence of behaviors defined and forbidden by the general rule and on individual considerations that establish a clear and proven link between the individual offender and the measure that restricts his or her rights.

21. Implementation of coercive measures, in themselves a delicate and dangerous matter, especially when they pertain to personal liberty, must take place in appropriate physical spaces, which do not worsen the measures or make them extreme, adding to their natural consequences other harmful effects. They must also be entrusted to persons who have been duly selected and trained for this task, under rigorous control and supervision.

22. The Inter-American Court of Human Rights has maintained that the State plays the role of guarantor, with the respective obligations, regarding the legally protected interests and rights of those under custody by the State itself. This position as a guarantor entails a certain duty of care, which as I stated before is reflected in actions and omissions required to fulfill the latter responsibility in each specific case according to its circumstances. This is not merely a matter of inferring consequences of the general duty of public authorities of providing security and protection to those subject to its jurisdiction, but also one of establishing the specific, direct and inescapable nature of this duty in the case of those subject, in the most intense and complete manner, de jure and de facto, to the powers of public authorities exercising custody of those

persons or control of their specific situation (a concrete duty of care in both cases) even when they are entrusted to a third party.

23. As establishments and as systems, prisons and detention and "treatment" institutions for minors fit within the category of "total institutions," where existence is subject to a meticulous and comprehensive regime. The area of freedom is drastically reduced in the hands of the State in charge of the institution and, therefore, this applies to the lives of those who are "institutionalized." Therefore, the State, whose field of authority grows extraordinarily, must take upon itself the responsibility for the consequences of said authority. By virtue of the above, it must answer for many things that would normally be under the responsibility of the interested person, as the master of his or her own behavior. For this reason, the State has an extraordinary "duty of care," which would not exist under other circumstances.

24. Thus, the State is the guarantor of the life, humane treatment and health, among other legally protected interests and rights of the detainees. Restrictions involved in the detention must not go beyond what is inherent to it, pursuant to its nature. In my separate concurring Opinion in the Hilaire, Constantine, Benjamin et al. vs. Trinidad and Tobago Case, June 21, 2002 Judgment, I stated that the role of guarantor entails: "a) avoiding all that which may inflict further suffering on the subject than is strictly necessary for the purposes of the detention or the fulfillment of the sentence, on the one hand, and b) providing all that is relevant - pursuant to the applicable law - to meet the aim of the imprisonment: security and social re-adaptation, regularly, on the other."

25. There is, therefore, a precise boundary between the legitimate action of the State and illegitimate behavior of its agents. The State must inform, explain and justify, in each specific case, the reduction of the rights of a person, and of course the very loss of his or her legally protected interests, especially the right to life, if this occurs while the State is exercising its role as guarantor, whether the injurious effect is the consequence of an active conduct –or this involves, in and of itself, a violation of international provisions-, or it is the result of an omissive behavior, which is the relevant hypothetical situation, under the penal regime, with respect to committing by omission. In any event, it would constitute an anomalous, undue or illegal action during performance of public functions, entailing the respective demand for accountability of those incurring in it: responsibility of the State and responsibility of the individuals. That of the latter must be required in accordance with the duties of criminal justice that constitute, as I have mentioned several times, a specific case within the broader class of reparations.

26. The instant Judgment mentions an important issue that procedural doctrine has debated at length: abuse of procedural rights, as it has been called, or procedural abuse, an issue that is in turn related to the principle of good faith and integrity, which should govern the proceeding. In this regard, the Judgment includes various expressions pertaining to abuse of rights in the instant case by the defense counsel, an attitude that was not rejected in a timely and appropriate manner by certain courts, which led to extraordinary delays in the proceeding. Thus, it was not possible for the proceeding to move forward to its natural culmination, and this gave way to a claim regarding extinguishment of the criminal action, a matter I will refer to below (para. 29).

27. I concur, of course, in the need for behavior in the proceeding to be in accordance with its object and purpose. Otherwise, this juridical channel would be subverted, altering its nature and

compromising its intent. The process does not fulfill its purpose "when its objective of ensuring ample debate in which the court can provide a fair solution is obstructed, altered, or hindered. The telesis of the proceeding is affected by the lack of good faith or integrity in actions," which is injurious to the guarantee of judicial protection of rights ("Relatorio geral latino-americano. Abuso de los derechos procesales en América Latina", in Barbosa Moreira, José Carlos (coord.,), Abuso dos direitos processuais, Instituto Ibero-Americano de Direito Processual, Instituto Iberoamericano de Derecho Procesal/Ed. Forense, Rio de Janeiro, 2000, p. 31).

28. The legislative body must regulate the proceeding and the judge must conduct it in such a manner that it will serve the objective for which it was developed. None of this involves restricting the legitimate use of the means authorized by law for legal defense. There must be no judicial authoritarianism, and it is not appropriate to obstruct defense of an indictee, with the aim of accelerating the trial, if this is detrimental to the rights of those involved in it and, ultimately, to justice itself. I believe that the statements made by the Court, and which I of course endorse, refer to the facts of the case being examined, and do not intend to make a general statement on all actions by defense counsel and judicial practices.

The Judgment to which this Opinion is attached addresses the issue of extinguishment as a domestic obstacle to compliance with obligations issuing from the international order and accepted by the States signatory to the 1969 Vienna Convention on the Law of Treaties (Article 27) and the American Convention. I have referred several times to these domestic obstacles, apropos of "self-amnesties" and extinguishment. I examine the latter hypothetical situation in my Separate concurring opinion to the Order on compliance with judgment, issued by the Inter-American Court on the 9th of this month, in the Benavides Cevallos Case. I therefore refer to what I have stated in that Opinion.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary

REASONED OPINION OF JUDGE RICARDO GIL LAVEDRA

1. In the brief time available to issue my concurring opinion with the decision of the Court, I should like to refer, very briefly, to certain significant aspects that, in my view, are raised by the judgment in this case, "Bulacio, Walter David," as well as to make several general comments on the matter. The most significant themes, in my view, are: the way in which the parties have arrived at a "friendly settlement," in light of the text of the Rules of Procedure of the Court; criminal punishment as a component of reparations for the violation of the human rights of the victim; the obligations of the judges to conduct the criminal proceeding on the basis of the right to judicial protection (Article 25 of the American convention) and full effectiveness of the decisions of the Court regarding domestic legal impediments.

2. Chapter V of the Rules of Procedure of the Inter-American Court of Human Rights sets forth the ways in which the proceedings before it can be concluded in advance. Thus, Article 52

regulates the hypothetical situation of a decision by the applicant not to continue the case (number 1), or the acquiescence of the respondent (number 2). Article 53, in turn, considers cases of friendly settlement, compromise, or any other occurrence likely to lead to a settlement of the dispute.

None of the above hypothetical situations is binding for the Court, which as a body for protection of human rights can decide not to accept the proposals made by the parties and decide to continue its consideration of the case (Article 54).

In this case, the Inter-American Commission, the representatives of the next of kin of the victim, and the State submitted to the Court a document in which the State acknowledged its international responsibility, based on a joint account of the facts, with certain differences with respect to how it had been set forth in the application. In brief, the parties settled the factual dispute amongst themselves and the respondent acknowledged its responsibility for those facts.

Specifically, the parties agreed that Walter David Bulacio had been illegally imprisoned, that neither his family nor a juvenile judge had been informed of this event, that the State had not exercised custody adequately, which contributed to his death, and that subsequently his next of kin did not have access to an effective legal remedy. These facts determined the international responsibility of the State for violation of Articles 2 (domestic legal effects), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to fair trial), 19 (rights of the child), and 25 (judicial protection), and they asked the Court to rule on appropriate reparations.

It is not clearly a case of a decision by the applicant not to continue the case, nor is it clearly one of acquiescence to the terms of the application. The situation before us is set within the context of Article 53 of the Rules of Procedure and what makes it admissible is, precisely, that there is an acknowledgment of international responsibility and that it does not differ substantially from the points that were being debated, and "full reparation" was offered.

These components, acknowledgment of international responsibility, basic agreement with the facts of the application and the offer to provide full reparation, lead the Court not to object to the agreement on the facts reached by the parties.

3. Article 1 of the American Convention sets forth the primary obligation of the States Party to respect the rights and liberties recognized therein, and to ensure their free and full exercise. This obligation to guarantee includes the duty to investigate and to punish those responsible, if there has been a violation of a protected right. For this, the victim and/or his next of kin have the protection granted by effective legal recourse (Article 25 of the aforementioned Convention). Numerous rulings of the Court have affirmed the aforementioned statement. [FN1]

Investigation of the facts satisfies the right that every victim has to the truth. Punishment of those guilty of what happened not only affirms and communicates to society the effectiveness of the rule that was breached, according to the usual ideas of positive general prevention, but also has an unequivocal meaning as reparation for the victim and/or his next of kin. In point of fact, violation of any human right involves an affront to the dignity and respect owed to every human being as such; therefore, punishment of whoever committed the act reestablishes the dignity and

esteem of the victim with respect to him or herself and the community. To some extent, it repairs the damage suffered.

Impunity not only fosters recidivism of the same facts, [FN2] but also hinders the reparative effect, for the victim, of criminal punishment. Investigation, ascertaining the truth, punishment of the guilty one, access to justice, effective legal remedy, all these are components that define the basic obligations of every State in face of the violation of a human right, to ensure its reparation and as a guarantee of non-recidivism.

[FN1] Among many others, Juan Humberto Sánchez Case. June 7, 2003 Judgment. Series C No. 99, para. 142; Bámaca Velásquez Case. November 25, 2000 Judgment. Series C No. 70, para. 210; Caballero Delgado and Santana Case. December 8, 1995 Judgment. Series C No. 22, paras. 55 and 56; Fairén Garbi and Solís Corrales Case. March 15, 1989 Judgment. Series C No. 6, para. 161; Godínez Cruz Case. January 20, 1989 Judgment. Series C No. 5, paras. 174 to 176; and Velásquez Rodríguez Case. July 29, 1988 Judgment. Series C No. 4, paras. 165 to 167.

[FN2] As the Court has stated, "the overall lack of investigation, pursuit, capture, trial and conviction of those responsible for violations of rights protected under the American Convention, as the State has the obligation to combat said situation by all legal means within its power, since impunity fosters chronic recidivism of human rights violations and total defenselessness of the victims and of their next of kin" (Cf. Juan Humberto Sánchez Case, supra note 1, paras. 143 and 185; Las Palmeras Case. Reparations (Art. 63 (1) American Convention on Human Rights). November 26, 2002 Judgment. Series C No. 96, para. 53.a); Caracazo Case. Reparations (Art. 63 (1) American Convention on Human Rights). August 29, 2002 Judgment. Series C No. 95, para. 117; Trujillo Oroza Case. Reparations (Art. 63 (1) American Convention on Human Rights). February 27, 2002 Judgment. Series C No. 92, paras. 97, 101 and 112; Las Palmeras Case. December 6, 2001 Judgment. Series C No. 90, para. 56; Bámaca Velásquez Case. Reparaciones (Art. 63 (1) American Convention on Human Rights). February 22, 2002 Judgment. Series C No. 91, para. 64; Bámaca Velásquez Case. November 25, 2000 Judgment. Series C No. 70, para. 211; and "White Van" Case (Paniagua Morales et al.). March 8, 1998 Judgment. Series C No. 37, para. 173).

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4. I have made the foregoing remarks because in this case, to date, the right of the next of kin of Walter Bulacio to effective legal protection -through punishment of those responsible for the facts that breached his rights- has been thwarted.

The fact that thirteen years after the events -not extremely complex in and of themselves (a massive detention of teenagers upon the occasion of a rock concert)- during which time a great number of judges have been involved in the proceeding (even the Supreme Court of Justice), it has not been able to conclude naturally through a judgment that definitively establishes the facts and those responsible for them, is not acceptable. There are no reasons to justify such a delay in the rendering of justice.

In this regard, I believe it appropriate to state that the judges have a delicate responsibility as directors of the proceeding. On the one hand, they must ensure compliance with the rules of due

process, enabling unrestricted exercise of the guarantees set forth in Article 8 of the American Convention, but on the other hand they must protect the victim's right to justice (Article 25 of the Convention), the concrete expression of which is delivery of a judgment on the facts and responsibilities.

With respect to the latter issue, judicial bodies must seek to avoid perversion of the meaning of legitimate means of defense and of the requirement of procedural good faith when they are exercised. This happens when repetitive or clearly out-of-place actions merely seek to delay the proceeding until criminal prosecution is extinguished simply due to the passage of time. If this were to happen, impunity would thwart the victim's right to justice, and effective judicial protection would become dead letter.

5. The judgment of the Court includes another significant point. It establishes that domestic legal provisions, such as extinguishment, cannot be raised as obstacles to decisions of the Court that deem investigation and punishment for violation of human rights to be in order as a form of reparation. This constitutes an additional step forward in case law that was being established regarding this matter. [FN3]

Extinguishment is a precept of ordinary law that involves abandonment of criminal prosecution by the State, when time elapsed since the crime was committed leads to the presumption that the social concern it caused has ceased, for which reason punishment imposed would lack a preventive purpose.

Judgments of the Court that deem the duty to investigate and punish appropriate in a given case, based on Article 1 of the American Convention, are binding for the States, due to the international commitment they have undertaken to comply with the obligations set forth in the Convention, especially Article 62 (1), which recognizes the binding jurisdiction of the Court regarding all cases pertaining to interpretation and enforcement of the Convention.

The binding nature of the orders of the Court, accepted by the States Party, entails a commitment under international law, pertaining to a treaty, that cannot be obstructed by domestic provisions. Otherwise, mechanisms for international protection of human rights, which the States have undertaken to respect, would lose all effectiveness.

[FN3] Cf. Benavides Cevallos Case. September 9, 2003 Order of the Inter-American Court of Human Rights, Whereas six and seven; Trujillo Oroza Case, Reparations, supra note 2, para. 106; Barrios Altos Case. Interpretation of Judgment on the Merits (Art. 67 American Convention on Human Rights). September 3, 2001 Judgment. Series C No. 83, para. 15; and Barrios Altos Case. March 14, 2001 Judgment. Series C No. 75, para. 41.

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6. As regards the duty to adjust domestic legislation to international standards, there is no doubt that Argentina has included in its domestic legislation, even granting them Constitutional status in certain cases, a large number of international human rights provisions. The regulatory

context that existed at the time when the police illegally detained Walter David Bulacio has been substantially modified.

Certainly one of the significant aspects yet pending in this regard is adjustment to the Convention on the Rights of the Child, through adoption of a juvenile criminal system that is in accordance with the requirements of said Convention.

Nevertheless, probably the best way to ensure non-recidivism of events such as those of the instant case, which unfortunately are not exceptional in everyday Latin American life, is adoption of police practices that undertake the commitment to respect human rights and judicial bodies that act as conscientious guardians against any deviations.

Ricardo Gil-Lavedra
Judge ad hoc

Manuel E. Ventura-Robles
Secretary