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### **Brítez Arce v. Argentina**

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# Brítez Arce v. Argentina

## ABSTRACT<sup>1</sup>

*This case is about the death of a pregnant woman due to obstetric violence, a form of gender-based violence that includes abusive, negligent, dehumanizing, or disrespectful treatment of pregnant women. The Court found Argentina in violation of several articles of the American Convention, including Article 26.*

### I. FACTS

#### A. Chronology of Events

**November 25, 1991:** Ms. Cristina Brítez Arce, a 38-year-old Paraguayan woman, attends her first prenatal checkup at the Argentine League Against Tuberculosis.<sup>2</sup> She discloses a history of hypertension.<sup>3</sup> She has two children, Mr. Ezequiel Martín Avaro and Ms. Vanina Verónica Avaro (“the petitioners”), respectively 15 and 12 years old.<sup>4</sup>

**March 11, 1992:** The hospital performs an ultrasound.<sup>5</sup> Ms. Brítez Arce meets with a cardiologist who notes her history of hypertension.<sup>6</sup>

**April 6, 1992-June 1, 1992:** Ms. Brítez Arce goes to the Ramón Sardá Mother’s and Children’s Public Hospital in Buenos Aires multiple times, has an additional ultrasound in May, and goes weekly in April.<sup>7</sup>

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<sup>1</sup> Gursimran Bhullar, Author; Callie Keller, Editor; Emily Bernstein and Davina Shoumer, Senior IACHR Editors; Sophia Suarez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

<sup>2</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 474, ¶¶ 27-28 (Nov. 16, 2022).

<sup>3</sup> *Id.* ¶ 28.

<sup>4</sup> *Id.* ¶ 27.

<sup>5</sup> *Id.* ¶ 28.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

**June 1, 1992:** Ms. Brítez Arce appears at the hospital complaining of fever, lower back pain, and genital fluid loss.<sup>8</sup> The medical staff performs an ultrasound and informs her that her fetus is dead.<sup>9</sup> The hospital induces labor where Ms. Brítez Arce was forced to wait in a chair for two out of the three and a half hours of her induced labor.<sup>10</sup> Ms. Brítez Arce passes away at 6:00 P.M. after the delivery of her stillborn child.<sup>11</sup> Ms. Brítez Arce's death certificate lists her cause of death as a non-traumatic cardio-respiratory arrest.<sup>12</sup> The deaths take an emotional and physical toll on the petitioners - her children.<sup>13</sup>

**June 15, 1992:** Mr. Miguel Ángel Avaro, Ms. Brítez Arce's former spouse and the petitioners' father, files a criminal complaint for manslaughter and requests autopsies of Ms. Brítez Arce and the fetus, which is ultimately conducted on July 25, 1992.<sup>14</sup>

**June 24, 1993:** Experts Mr. Carlos Fernando Leoncio Poggi and Mr. Florencio Casavilla from the Forensic Medical Corps submit an expert report for the criminal manslaughter proceedings which is ruled to be false and subsequently nullified and voided.<sup>15</sup>

**October 4, 1993:** The Fourth Chamber of the Criminal Court files a separate criminal complaint against Mr. Leoncio Poggi and Mr. Casavilla for falsifying a legal document.<sup>16</sup> Subsequently, the first instance court judge dismisses the doctors.<sup>17</sup> The Public Prosecutor's Office and petitioners appeal following the physicians' acquittal of the falsifying crime, resulting in three additional expert reports from the Forensic Medical Corps.<sup>18</sup>

**May 31, 1994:** The petitioners initiate civil proceedings against Ms. Brítez Arce's physicians, the hospital, and the City of Buenos Aires, seeking damages for carelessness, negligence, and

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<sup>8</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 29.

<sup>9</sup> Brítez Arce v. Argentina, Report on Merits, Report 236/19, Inter-Am. Comm'n H.R., Case No. 13.002, ¶¶ 3, 23 (Dec. 6, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ¶ 3.

<sup>14</sup> *Id.* ¶¶ 4, 24.

<sup>15</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 25.

<sup>16</sup> *Id.*

<sup>17</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 36.

<sup>18</sup> *Id.* ¶ 36; Brítez Arce v. Argentina, Report on Merits, ¶ 32.

incompetence.<sup>19</sup>

**April 25, 1995:** The Forensic Medical Corps submits their expert report for the criminal proceedings.<sup>20</sup> This report and testimony confirm Ms. Brítez Arce was high risk and needed a different treatment.<sup>21</sup>

**May 21, 1997:** Thirty-one physicians at the Medical Examiners Corps of the Supreme Court of Justice of the Nation issue a plenary expert report for the criminal trials of Mr. Leoncio Poggi and Mr. Casavilla which show fetal viability.<sup>22</sup>

**September 23, 1997:** The Fourth Chamber of the Criminal Court nullifies and voids the Forensic Medical Corps' April 25<sup>th</sup>, 1995 expert opinion and orders another plenary from the Catholic University of Córdoba to check Mr. Leoncio Poggi and Mr. Casavilla's reports.<sup>23</sup>

**March 25, 1998:** The Catholic University of Córdoba submits its report to the court for the falsifying legal documents criminal case, indicating the medical record from the hospital contained various omissions, an altered number, and incomplete names.<sup>24</sup> It finds Ms. Brítez Arce's pregnancy risky, indicates a poor quality of medical care, and identifies deficiencies in her medical history.<sup>25</sup>

**April 1, 1998:** Mr. Ángel Avaro files another criminal complaint alleging the crimes of falsifying a public document, false expertise, and cover-up against the 31 Medical Examiners Corps physicians from the case against Mr. Leoncio Poggi and Mr. Casavilla.<sup>26</sup> There is a daily newspaper article published in 1998 where Dr. Julio Alberto Ravioli claims that the report was given to the forensic scientists already filled out so that they could just sign it.<sup>27</sup>

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<sup>19</sup> Brítez Arce v. Argentina, Report on Merits, ¶¶ 11, 47.

<sup>20</sup> *Id.* ¶ 26.

<sup>21</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 32; Brítez Arce v. Argentina, Report on Merits, ¶ 27.

<sup>22</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶¶ 36-40.

<sup>23</sup> Brítez Arce v. Argentina, Report on Merits, ¶¶ 33-34.

<sup>24</sup> *Id.*

<sup>25</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶¶ 37-38.

<sup>26</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 39.

<sup>27</sup> *Id.* ¶ 40.

**April 30, 1998:** Mr. Ángel Avaro requests recusal of the investigating judge in the criminal case against Mr. Leoncio Poggi and Mr. Casavilla based on two grounds: (1) the judge's interest in the outcome, and (2) how the judge assessed the case before hearings occurred.<sup>28</sup> This request highlights that the criminal case for falsifying documents had almost lasted five years, contrary to a statutory limit of four months; and that the judge had acquitted both Mr. Leoncio Poggi and Mr. Casavilla five times, although each acquittal had been overturned.<sup>29</sup>

**June 18, 1998:** The recusal for the criminal claim of falsifying documents against Mr. Leoncio Poggi and Mr. Casavilla is ruled inadmissible but the judge recommends that the examination is carried out more quickly to avoid the statute of limitations running on any claims.<sup>30</sup>

**December 16, 1998:** The prosecutor in charge of the criminal case regarding Ms. Brítez Arce's death charges Dr. Eduardo Mario Negri and Dr. Patricia Carmen Anido ('medical staff') with manslaughter.<sup>31</sup> The prosecutor requests a suspended 3-year prison sentence and 9 years disqualification from medical practice.<sup>32</sup>

**April 12, 1999:** The judge acquits the 31 criminally charged Medical Examiner Corps physicians.<sup>33</sup>

**April 16, 1999:** Mr. Ángel Avaro appeals the acquittal of the 31 Medical Examiner Corps physicians and requests nullification, stating that the ruling did not consider important evidentiary elements.<sup>34</sup>

**August 6, 1999:** The Chamber of Appeals upholds the acquittal of the 31 physicians since multiple medical judgments concluded that there was no falsification.<sup>35</sup> Mr. Ángel Avaro files a cassation appeal.<sup>36</sup>

**October 20, 1999:** The National Criminal Cassation Court denies

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<sup>28</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 36.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* ¶ 37.

<sup>31</sup> *Id.* ¶¶ 5, 28.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* ¶ 42.

<sup>34</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 42.

<sup>35</sup> *Id.* ¶ 43.

<sup>36</sup> *Id.* ¶ 44.

Mr. Ángel Avaro’s appeal for the April 1, 1998 case and the 31 physicians remain acquitted.<sup>37</sup>

**November 2, 1999:** Mr. Ángel Avaro appeals the National Criminal Cassation Court’s denial of his appeal for the 31 physicians arguing that the denial violates his constitutional right for a reasoned judgment.<sup>38</sup>

**March 30, 2000:** The National Criminal Cassation court dismisses Mr. Ángel Avaro’s appeal, reasoning that these proceedings are not focused on Ms. Brítez Arce’s cause of death but rather a potential malpractice offense which is outside the scope of the appeal.<sup>39</sup>

**May 8, 2000:** Mr. Ángel Avaro files an extraordinary federal appeal and requests that Supreme Court judges with influence over the Medical Examiners Corps recuse themselves.<sup>40</sup>

**July 24, 2000:** Judge Alejandro C. Verdaguer, in charge of the civil case, orders Physician Eduardo Roberto Barrón to submit an expert report answering ten questions that ultimately concludes that Ms. Brítez Arce received adequate medical care.<sup>41</sup> The report finds that although she had high blood pressure, received no heart evaluation, and had an additional risk factor of excessive weight gain, the overall delivery decision was appropriate because her readings and checkups showed no increased cardiac risk nor a possible miscarriage.<sup>42</sup>

**April 20, 2001:** The petitioners submit the initial petition on behalf of Ms. Brítez Arce before the Inter-American Commission on Human Rights (“The Commission”).<sup>43</sup>

**May 10, 2001:** The Commission receives the petition.<sup>44</sup>

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<sup>37</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 44.

<sup>38</sup> *Id.* ¶ 45.

<sup>39</sup> *Id.* ¶ 42.

<sup>40</sup> *Id.* ¶ 46.

<sup>41</sup> *Id.* ¶ 48.

<sup>42</sup> *Id.*

<sup>43</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 1.

<sup>44</sup> Brítez Arce v. Argentina, Admissibility Report, Report No. 46/15, Inter-Am. Comm’n H.R., Case No. 13.002, ¶ 1 (Jul. 28, 2015).

**October 21, 2002:** The National Criminal and Correctional Court of Appeals upholds Mr. Casavilla and Mr. Leoncio Poggi's acquittal for criminal charges of falsifying documents.<sup>45</sup>

**July 18, 2003:** The medical staff is criminally acquitted for the manslaughter charge.<sup>46</sup> The prosecutor appeals.<sup>47</sup> The Criminal and Correctional Appeals Court upholds the judgment, as it finds it impossible to determine the exact reasons for the deaths and thus can not attribute the death to the doctors.<sup>48</sup> Mr. Ángel Avaro files an inadmissible, untimely extraordinary federal appeal on the decision.<sup>49</sup>

**December 23, 2003:** The National Criminal Cassation Court denies Mr. Ángel Avaro's extraordinary federal appeal for the acquittal of the 31 physicians, deeming it inadmissible because of its untimeliness and lacked grounds of the claimed arbitrariness.<sup>50</sup>

**January 3, 2005:** The Commission relays the petition to the State.<sup>51</sup>

**July 19, 2005:** In its reply, the State argues the petition is inadmissible because it has no colorable claims of violation and preliminarily objects due to the petitioner's non-exhaustion of domestic remedies.<sup>52</sup>

**November 27, 2008:** Physician Ángel Miguel Cabarcas submits an expert report for the civil case indicating medical malpractice due to hypertension, excessive weight gain, lack of a prescribed diet and other preventative measures, and mistaken reports.<sup>53</sup>

**September 22, 2009:** The State presents additional observations and requests to set aside the petition.<sup>54</sup>

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<sup>45</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 38.

<sup>46</sup> *Id.* ¶ 29.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Brítez Arce v. Argentina, Admissibility Report, ¶ 37.

<sup>50</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 34; The Inter-American Commission reported that this extraordinary federal appeal was ruled inadmissible on October 17, 2000. Brítez Arce v. Argentina, Report on Merits, ¶ 46.

<sup>51</sup> Brítez Arce v. Argentina, Admissibility Report, ¶ 4.

<sup>52</sup> *Id.* ¶¶ 2, 5.

<sup>53</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 49.

<sup>54</sup> Brítez Arce v. Argentina, Admissibility Report, ¶ 5.

**November 25, 2009:** The Civil Court of First Instance dismisses the 1994 civil lawsuit, reasoning that the expert medical examiner could not determine Ms. Brítez Arce’s cause of death because the autopsy was not conducted immediately after her death.<sup>55</sup> He also concluded that, although Ms. Brítez Arce’s poor treatment led to the death of her child, there is no indication that it related to her death.<sup>56</sup>

**June 7, 2011:** The petitioners file an additional criminal complaint for false testimony against medical expert Dr. Barrón regarding his expert report in the civil suit.<sup>57</sup>

**June 21, 2011:** Mr. Ángel Avaro requests to revoke a brief denouncing Dr. Barrón’s medical opinion in the civil suit.<sup>58</sup>

**July 5, 2011:** The Civil Court of Appeals dismisses the revocation appeal for Dr. Barrón’s denouncing brief in the civil suit.<sup>59</sup>

**October 20, 2011:** Dr. Barrón is criminally acquitted from his false testimony charge, which Mr. Ángel Avaro appeals.<sup>60</sup>

**December 13, 2011:** The First Chamber of the Criminal Court upholds Dr. Barrón’s acquittal, denying Mr. Ángel Avaro’s appeal.<sup>61</sup>

**February 6, 2012:** Mr. Ángel Avaro files a cassation appeal and a denial of cassation, both of which are dismissed.<sup>62</sup>

**February 7, 2012:** The Civil Court of Appeals upholds the dismissal of the 1994 civil action.<sup>63</sup>

**May 21, 2012:** The extraordinary appeal for the civil suit against the physicians, the hospital, and the city government is denied.<sup>64</sup> Overall,

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<sup>55</sup> *Brítez Arce v. Argentina*, Report on Merits, ¶ 50.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* ¶ 53.

<sup>58</sup> *Id.* ¶ 51.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* ¶ 53.

<sup>61</sup> *Brítez Arce v. Argentina*, Report on Merits, ¶ 53.

<sup>62</sup> *Id.* ¶ 53 n.68.

<sup>63</sup> *Id.* ¶ 52.

<sup>64</sup> *Id.* ¶ 53 n.68.



the State invalidated one civil case and three criminal cases after the presentation of ten total expert reports.<sup>65</sup>

### *B. Other Relevant Facts*

Obstetric violence is a form of gender-based violence that includes abusive, negligent, dehumanizing, or disrespectful treatment of pregnant women.<sup>66</sup> This violence is perpetrated in a multitude of ways such as forced medical interventions and withholding of treatment during pregnancy, childbirth, and post-partum.<sup>67</sup>

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**April 20, 2001:** The petitioners submit the initial petition on behalf of Ms. Brítez Arce before the Inter-American Commission on Human Rights (“The Commission”).<sup>68</sup>

**July 28, 2015:** The Commission approves Admissibility Report No. 46/15.<sup>69</sup> The Commission finds that domestic remedies are sufficiently exhausted and that the provisions of the American Convention are met.<sup>70</sup>

**October 1, 2015:** The Commission forwards Admissibility Report No. 46/15 to the parties and encourages friendly settlement.<sup>71</sup>

**December 6, 2019:** The Commission approves Merits Report No. 236.19.<sup>72</sup> The Commission finds that Argentina violated Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within

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<sup>65</sup> Brítez Arce v. Argentina, Official Summary, Inter-Am. Ct. H.R. (ser. C) No. 474, at ¶ 2 (Nov. 16, 2022).

<sup>66</sup> Inter-Am. Ct. Hum. Rts., *Argentina is Responsible for Obstetric Violence and the Death of Cristina Brítez Arce, Who was Pregnant at the Time of her Death*, (Jan. 18, 2023), [https://cor-teidh.or.cr/docs/comunicados/cp\\_02\\_2023\\_eng.pdf](https://cor-teidh.or.cr/docs/comunicados/cp_02_2023_eng.pdf).

<sup>67</sup> *Id.*

<sup>68</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 1.

<sup>69</sup> *Id.* ¶ 2.

<sup>70</sup> Brítez Arce v. Argentina, Admissibility Report, ¶ 45.

<sup>71</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 2.

<sup>72</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 2(c).

Reasonable Time by a Competent and Independent Tribunal), 25(1) (Right of Recourse Before a Competent Court), 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) all in relation to Article 1(1) (Obligation of Non-Discrimination) of the Inter-American Convention.<sup>73</sup> The Commission also finds that Argentina violated Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of the Belém do Pará.<sup>74</sup> The Commission recommends the State to provide necessary training to health personnel helping pregnant women in compliance with the standards of the merits report, ensure mental health services to the petitioners if they wish, and provide comprehensive non-pecuniary and pecuniary reparations for the violations found for the victim's next of kin.<sup>75</sup>

**February 25, 2020:** The State receives notice of the Merits Report and is given two months to report on its compliance with the recommendations.<sup>76</sup> The State receives three extensions.<sup>77</sup>

### *B. Before the Court*

**February 25, 2021:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>78</sup> The Court receives an amicus curiae brief from the Center of Reproductive Rights.<sup>79</sup>

**June 16, 2022:** The State presents its final arguments.<sup>80</sup> The State recognizes its international responsibility and accepts the legal and factual considerations in the Merits Report.<sup>81</sup>

The Court acknowledges that the facts are not in controversy.<sup>82</sup> The Court states that there is no controversy on the following violations; (1) Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in

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<sup>73</sup> *Brítez Arce v. Argentina*, Report on Merits, ¶ 109.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* ¶¶ 110 (1)-(3).

<sup>76</sup> *Brítez Arce v. Argentina*, Merits, Reparations, and Costs, ¶ 2(d).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* ¶ 1.

<sup>79</sup> *Id.* ¶ 9.

<sup>80</sup> *Id.* ¶ 10.

<sup>81</sup> *Id.* ¶ 14.

<sup>82</sup> *Brítez Arce v. Argentina*, Merits, Reparations, and Costs, ¶ 18.

relation to Article 1(1) of the American Convention to detriment of Ms. Brítez Arce; (2) Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the American Convention and Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará to the detriment of Mr. Martín Avaro and Ms. Verónica Avaro; and (3) Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) of the American Convention to the detriment of Mr. Martín Avaro and Ms. Verónica Avaro.<sup>83</sup> Accordingly, the Court considers the scope of Argentina's international responsibility and appropriate reparations.<sup>84</sup>

**June 20, 2022:** The Commission and the representatives submit their final arguments and observations.<sup>85</sup>

### 1. Violations Alleged by Commission<sup>86</sup>

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25(1) (Right of Recourse Before a Competent Court)

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)

*all in relation to*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

And Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará.

### 2. Violations Alleged by Representatives of the Victims<sup>87</sup>

Same Violations Alleged by Commission, plus:

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<sup>83</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 19.

<sup>84</sup> *Id.* ¶ 23.

<sup>85</sup> *Id.* ¶ 10.

<sup>86</sup> Brítez Arce v. Argentina, Report on Merits, ¶ 109.

<sup>87</sup> Mr. René Federico Garrís served as representative of Mr. Ezequiel Martín Avaro and Ms. Vanina Verónica Avaro. Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶¶ 86, 96-97.

Article 17(1) (Family’s Right to Be Protected)

Article 19 (Rights of the Child)

*all in relation to*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

### III. MERITS

#### A. *Composition of the Court*<sup>88</sup>

Ricardo C. Pérez Manrique, President

Humberto Antonio Sierra Porto, Vice-President

Eduardo Ferrer Mac-Gregor Poisot, Judge

Nancy Hernández López, Judge

Patricia Pérez Goldberg, Judge

Rodrigo de Bittencourt Mudrovitsch, Judge

Pablo Saavedra Alessandri, Secretary

#### B. *Decision on the Merits*

**November 16, 2022:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>89</sup>

The Court found unanimously that Argentina had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) of the Convention, to the detriment of Ms. Britez Arce,<sup>90</sup> because:

*Rights to reproductive and sexual health are inseparable from other human rights and should be comprehensively reviewed with other humans rights and be enforceable within states.<sup>91</sup> The State recognized that it did not provide proper health services in accordance with the*

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<sup>88</sup> Argentinian Judge Verónica Gómez did not take part in the signature and deliberation of the judgment in accordance the Court’s Rules of Procedure. Britez Arce v. Argentina, Merits, Reparations, and Costs, n.\*.

<sup>89</sup> *Id.* ¶ 1.

<sup>90</sup> *Id.* “Declares” ¶ 137(2).

<sup>91</sup> Britez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 57.

rights of life, health, and integrity during pregnancy, childbirth, and postpartum.<sup>92</sup> The Court has found that adequate healthcare is directly linked to the Conventionally protected human rights to life and integrity since people should enjoy the highest possible quality of life.<sup>93</sup> States have a duty to ensure access to health services that are effective and to promote healthy conditions for people throughout the state.<sup>94</sup> These health services should comply with principles of quality, availability, acceptability, and accessibility as determined by each State's conditions.<sup>95</sup> As such, vulnerable and marginalized groups warrant a special duty of care, especially in cases of pregnancy where inadequate medical care and poverty may cause high maternal morbidity.<sup>96</sup>

The Court cited numerous international treaties, covenants, and human rights courts' and committees' rulings that require states to provide adequate maternal healthcare because between 88-98% of maternal deaths are preventable.<sup>97</sup> Based on these internationally recognized obligations, the Court found that States are obligated to provide specialized, differentiated, and adequate medical care throughout a women's pregnancy to protect the child and mother.<sup>98</sup> The Court interpreted that the right to life, a fundamental human right, includes the ability to exercise and enjoy all recognized rights.<sup>99</sup> The Court then interpreted that Article 4(1) (Prohibition of Arbitrary Deprivation of Life) places a negative obligation on states to ensure that people are not deprived of their life and an obligation to protect and preserve their life.<sup>100</sup> The Court then inferred that this right includes health care and that inadequate health care may violate this right to life for those who are pregnant or who have recently given birth.<sup>101</sup> Accordingly, the Court recognized that inadequate measures to prevent maternal deaths impact pregnant people's right to life, that maternal death is an injustice, and that it must meet the above elements.<sup>102</sup> Specifically, the Court highlighted that accessibility includes the right to receive, disseminate and seek information

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<sup>92</sup> *Brítez Arce v. Argentina, Merits, Reparations, and Costs*, ¶ 57.

<sup>93</sup> *Id.* ¶¶ 59-60.

<sup>94</sup> *Id.* ¶ 61.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* ¶ 61-62.

<sup>97</sup> *Id.* ¶¶ 63-67, 70.

<sup>98</sup> *Brítez Arce v. Argentina, Merits, Reparations, and Costs*, ¶ 68.

<sup>99</sup> *Id.* ¶ 69.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* ¶¶ 69-70.

<sup>102</sup> *Id.* ¶¶ 70-71.

*regarding reproductive and sexual health generally and each individual's right to know the unbiased status of their own health throughout pregnancy.*<sup>103</sup>

*Inadequate health care for pregnancy may also violate Article 5(1) (Right to Physical, Mental, and Moral Integrity) because these actions may be mistreatment, specific violence, or torture.*<sup>104</sup>

*Mistreatment includes prolonging medical procedures or harming the pregnant person by not using anesthesia.*<sup>105</sup> *The Court highlighted that it has ruled previously that obstetric violence, or conduct that includes disrespectful, negligent, or abusive treatment, constitutes a human rights violation.*<sup>106</sup>

*Ms. Britez Arce faced risks that were inadequately assessed, including a history of high blood pressure, her age, and significant weight gain.*<sup>107</sup> *These factors should have placed her into a group of high-risk patients requiring a heightened duty of care.*<sup>108</sup> *Instead, her rights were violated as she was left vulnerable, uninformed as to the potential danger of conditions that could be affecting her, and exposed to further harm.*<sup>109</sup> *The Court highlighted that there was nothing in the record indicating that Ms. Britez Arce was informed about the treatment that she would undergo before she was put into labor for three hours, while sitting in a chair for two of these three hours.*<sup>110</sup> *This treatment and lack of information, following her learning about her miscarriage, subjected Ms. Britez Arce to anxiety, stress and anguish and increased vulnerability.*<sup>111</sup> *Thus, the Court concluded this dehumanizing treatment constituted obstetric violence and held the State violated its international responsibility.*<sup>112</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the

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<sup>103</sup> Britez Arce v. Argentina, Merits, Reparations, and Costs, ¶¶ 72-73.

<sup>104</sup> *Id.* ¶ 74.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* ¶ 75.

<sup>107</sup> *Id.* ¶ 82.

<sup>108</sup> *Id.*

<sup>109</sup> Britez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 83.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* ¶¶ 84-86.

<sup>112</sup> *Id.* ¶ 86.

Convention and Article 7 of the Convention of Belém, to the detriment of Mr. Martín Avaro and Ms. Verónica Avaro,<sup>113</sup> because:

*Article 7 of the Convention of Belém requires States to punish, eradicate, prevent, and refrain from practicing violence against women, including occurrences regarding reproductive health services and obstetric violence because all women have the right to public and private safety in their lives.<sup>114</sup> States must consider that pregnant women and women in post-partum are especially vulnerable in violent situations.<sup>115</sup> States are recommended to criminalize obstetric violence by establishing appropriate and natural processes before, during, and after childbirth.<sup>116</sup> These procedures should guarantee voluntary consent from women regarding their reproductive and sexual health while respecting cultural customs.<sup>117</sup>*

*The State accepted a broad view of international responsibility and thus the Court did not find it necessary to explain its ruling on these articles.<sup>118</sup>*

Article 5(1) (Right to Physical, Mental, and Moral Integrity), Article 17(1) (Family's Right to Be Protected) and Article 19 (Rights of the Child), in relation to Article 1(1) of the Convention, to the detriment of Mr. Martín Avaro and Ms. Verónica Avaro,<sup>119</sup> because:

*The State recognized it had violated these rights as the Merits Report identified and that it did not protect the personal integrity and rights of the children and family.<sup>120</sup> The Court has consistently found relatives of the victims of human rights violations to be victims themselves due to the events their family faced and the subsequent difficulties of seeking justice and maintaining familial bonds.<sup>121</sup> Article 17 (Rights of the Family) recognizes that the state and society must protect the nuclear family unit because it is an important element of society.<sup>122</sup> States are therefore obligated to promote the strength and development of nuclear*

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<sup>113</sup> *Brítez Arce v. Argentina, Merits, Reparations, and Costs*, “Declares” ¶ 137(4).

<sup>114</sup> *Id.* ¶¶ 76-78.

<sup>115</sup> *Id.* ¶¶ 76-77.

<sup>116</sup> *Id.* ¶ 80.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* ¶ 23.

<sup>119</sup> *Brítez Arce v. Argentina, Merits, Reparations, and Costs*, “Declares” ¶ 137(5).

<sup>120</sup> *Id.* ¶¶ 87, 89.

<sup>121</sup> *Id.* ¶ 90.

<sup>122</sup> *Id.* ¶ 94.

*families by recognizing children's rights to live with their families.<sup>123</sup> Families are the first call to satisfy a child's psychological, emotional, or material needs.<sup>124</sup> The Court has recognized through other international law, like the Convention on the Rights of the Child and the principle of *copis juris*, that Article 19 (Rights of the Child) requires that States protect the rights of children to grow up in happy, loving, and understanding families that promote their development by offering conditions through which they can develop to their full potential.<sup>125</sup>*

*In addition to the violations the State recognized their responsibility for, the Court heard about additional suffering that Mr. Martín Avaro and Ms. Verónica Avaro experienced.<sup>126</sup> As children, the petitioners faced suffering and anguish resulting from their mother's and sibling's death and Argentina's subsequent actions.<sup>127</sup> The petitioner's nuclear family was separated when they were young teens because each had to live with different family members after their mother died, significantly derailing their life paths.<sup>128</sup> Being separated and living with different family members and experiencing the traumatic death and subsequent state investigation affected Mr. Martín Avaro's and Ms. Verónica Avaro's identities and ability to maintain lifelong relationships with each other and other people.<sup>129</sup> Decades later, the true cause of their mother's and sibling's deaths is still unknown because of ineffective investigation and litigation, intensifying Mr. Martín Avaro's and Ms. Verónica Avaro's feelings of helplessness and insecurity.<sup>130</sup> Further, Ms. Verónica Avaro's trauma prevented her from going through a pregnancy and starting a family.<sup>131</sup> The Court found, by applying the *iura novit curia* principle, that the State violated the petitioners' rights by not protecting their family and affecting their personal integrity.<sup>132</sup>*

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<sup>123</sup> Britez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 94.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* ¶ 95.

<sup>126</sup> *Id.* ¶ 91.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* ¶ 93.

<sup>129</sup> Britez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 93.

<sup>130</sup> *Id.* ¶ 92.

<sup>131</sup> *Id.* ¶ 93.

<sup>132</sup> *Id.* ¶ 97.



The Court found by four votes to two that Argentina had violated:

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Article 1(1) of the Convention, to the detriment of Ms. Brítez Arce,<sup>133</sup> because:

*The majority interpreted Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) as integrating economic, cultural, social, and environmental rights in with the other protected rights referred to in the Charter of the Organization of American States ("OAS Charter") as many regional states have integrated these rights into their constitutions and laws.*<sup>134</sup>

*Partially dissenting Judges Humberto Antonio Sierra Porto and Patricia Pérez Goldberg interpreted Article 26 differently and believed the Court lacked jurisdiction and power to extend Article 26 to economic, social, environmental, and cultural rights.*<sup>135</sup>

### C. Dissenting and Concurring Opinions

#### 1. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Sierra Porto argued the court overstepped obligations in the Vienna Convention on the Law of the Treaties and Protocol of San Salvador by assuming that economic, cultural, environmental, and social rights are included in the language of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the Convention.<sup>136</sup> Though he recognized that these laws are related to human rights as a whole and deserve equal treatment and importance, he believed the majority should have taken a broader approach to understand how these rights intertwine into the protected category and not expanded the Court's powers and jurisdiction.<sup>137</sup>

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<sup>133</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, "Declares" ¶ 137(3).

<sup>134</sup> *Id.* ¶ 58.

<sup>135</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 474, ¶ 2 (Nov. 16, 2022); Brítez Arce v. Argentina, Merits, Reparations, and Costs, Separate Opinion of Judge Patricia Pérez Goldberg, Inter-Am. Ct. H.R. (ser. C) No. 474, ¶¶ 1, 3 (Nov. 16, 2022).

<sup>136</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, ¶ 3.

<sup>137</sup> *Id.* ¶ 4.

## 2. Partially Dissenting Opinion of Judge Patricia Pérez Goldberg

In a separate opinion, Judge Pérez Goldberg found the majority did not properly interpret Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).<sup>138</sup> She, like Judge Sierra Porto, believed that economic, cultural, environmental, and social rights should be analyzed within the dimensions of conventionally protected human rights since they are not mentioned in the text.<sup>139</sup> She argued these rights are within State's jurisdiction rather than the Court because the Charter does not refer to the right to health.<sup>140</sup>

### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

#### *A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

##### 1. Judgment as a Form of Reparation

The Court indicated that the Judgment, per se, constituted a form of reparation.<sup>141</sup> Argentina must accessibly publish the judgment's official summary on the State's Official Gazette, a widespread national media, and the entire judgment on the Ministry of Health and Ministry of Women, Gender and Diversity's websites in an appropriate and legible font size within six months of notification of the judgment.<sup>142</sup> The State must also post the Judgment five times on the Ministry of Health and the Ministry of Women, Gender and Diversity's social media accounts, declaring its responsibility and including a link to the full ruling.<sup>143</sup> Argentina must immediately report each publication to the Court.<sup>144</sup> The State must pay the damages they owe within one year of

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<sup>138</sup> *Britez Arce v. Argentina*, Merits, Reparations, and Costs, Separate Opinion of Judge Patricia Pérez Goldberg, ¶¶ 1, 3.

<sup>139</sup> *Id.* ¶ 18.

<sup>140</sup> *Id.* ¶¶ 12, 16.

<sup>141</sup> *Britez Arce v. Argentina*, Merits, Reparations, and Costs, "And it has" ¶ 137(6).

<sup>142</sup> *Id.* ¶¶ 108-109.

<sup>143</sup> *Id.* ¶ 109.

<sup>144</sup> *Id.*

notification of the judgment.<sup>145</sup> Lastly, Argentina must submit a compliance report within one year of the notification of the judgment.<sup>146</sup>

## 2. Obstetric Violence Rights Campaign

Within one year, Argentina must design a campaign centered around rights related to circumstances that may be obstetric violence during pregnancy, labor, or postpartum care.<sup>147</sup> The campaign should emphasize the Humanized Childbirth Law, the situations constituting obstetric violence under the Comprehensive Protection Law, and pregnant people's rights to informed consent and humanized care throughout and after their pregnancy.<sup>148</sup> The campaign must be broadcast through audio or video advertisements on the radio and television in all of the country's maternity hospitals.<sup>149</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$64,000 for loss of income to be split equally and paid to Ms. Brítez Arce's children.<sup>150</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$60,000 for Ms. Brítez Arce non-pecuniary compensation to be split equally and paid to her children, Mr. Martín Avaro and Ms. Verónica Avaro.<sup>151</sup> Additionally, the Court awarded \$25,000 each to the children for pain and suffering.<sup>152</sup>

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<sup>145</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 131.

<sup>146</sup> *Id.* "And it has" ¶ 137(10).

<sup>147</sup> *Id.* ¶ 119.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* ¶ 124.

<sup>151</sup> Brítez Arce v. Argentina, Merits, Reparations, and Costs, ¶ 125.

<sup>152</sup> *Id.*

### 3. Costs and Expenses

The Court awarded \$20,000 to Mr. René Federico Garrís and \$15,000 each to the two petitioners, Mr. Martín Avaro and Ms. Verónica Avaro, paid within a year from the notification of the judgment.<sup>153</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$224,000 USD

### *C. Deadlines*

The State must comply with the ordered payments within one year of notification of the judgment.<sup>154</sup> The State must publish the Judgment nationwide and publicize it on the Ministry of Women, Gender and Diversity's social media accounts within six months of notification of the judgment.<sup>155</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Preliminary Objections

[None]

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<sup>153</sup> *Britez Arce v. Argentina*, Merits, Reparations, and Costs, ¶¶ 130-31.

<sup>154</sup> *Id.* ¶ 131.

<sup>155</sup> *Id.* ¶¶ 108-9.

## 2. Decisions on Merits, Reparations and Costs

Brítez Arce v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 474 (Nov. 16, 2022).

Brítez Arce v. Argentina, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 474 (Nov. 16, 2022).

Brítez Arce v. Argentina, Merits, Reparations, and Costs, Separate Opinion of Judge Patricia Pérez Goldberg, Inter-Am. Ct. H.R. (ser. C) No. 474 (Nov. 16, 2022).

## 3. Provisional Measures

[None]

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

### *B. Inter-American Commission*

#### 1. Petition to the Commission

[None]

#### 2. Report on Admissibility

Brítez Arce v. Argentina, Admissibility Report, Report No. 46/15, Inter-Am. Comm'n H.R., Case No. 315.01 (July 28, 2015).

#### 3. Provisional Measures

[None]

## 4. Report on Merits

Brítez Arce v. Argentina, Report on Merits, Report 236/19, Inter-Am. Comm'n H.R., Case No. 13.002 (Dec. 6, 2019).

## 5. Application to the Court

Brítez Arce v. Argentina, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 13.002 (Feb. 25, 2021).

## VIII. BIBLIOGRAPHY

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Inter-Am. Ct. H.R., *Argentina is Responsible for Obstetric Violence and the Death of Cristina Brítez Arce, Who was Pregnant at the Time of her Death*, (Jan. 18, 2023), [https://www.corteidh.or.cr/docs/comunicados/cp\\_02\\_2023\\_eng.pdf](https://www.corteidh.or.cr/docs/comunicados/cp_02_2023_eng.pdf).