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**REPORT No. 146/18**  
**CASE 12.906**

REPORT ON THE MERITS

JOSÉ DELFÍN ACOSTA MARTÍNEZ AND FAMILY  
ARGENTINA

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**MERITS**

**JOSÉ DELFÍN ACOSTA MARTINEZ AND FAMILY**

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**DECEMBER 7, 2018**

**I. SUMMARY**

1. On June 6, 2002, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition lodged by the Comisión de familiares de víctimas indefensas de la violencia social (COFAVI)<sup>1</sup>, the Centro de Investigaciones Sociales y asesorías Legales Populares (CISALP), and Paola Gabriela Canova (hereinafter "the petitioners"), alleging that the Republic of Argentina (hereinafter "the Argentine State," "the State," or "Argentina") is internationally responsible for the harm done to José Delfín Acosta Martínez (hereinafter the "alleged victim").

2. The Commission approved admissibility report No. 36/13 on July 11, 2013.<sup>2</sup> On August 1, 2013, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement.<sup>3</sup> The parties were allowed time, in accordance with regulations, to submit additional observations on the merits. All the information received was duly relayed between the parties.

3. The petitioners alleged that on April 5, 1996 the alleged victim, José Delfín Acosta Martínez, had been unjustifiably detained for being a foreigner and of African descent. They added that he had been beaten by the police and had died from those injuries shortly afterwards. They alleged that no real investigation of the facts was conducted because the investigating judge archived the case without even ruling on the legality of the detention and without taking into consideration all the evidence submitted by the plaintiffs. They further stated that higher courts simply repeated the resolution of the court of first instance.

4. The State presented no arguments at the merits stage. Nevertheless, during the admissibility stage, it alleged that Mr. José Delfín Acosta had been detained because of a complaint that an armed and drugged person was in the vicinity. It stated that during the investigation into the facts various witnesses had asserted that José Delfín Acosta had been drunk and disturbing the peace, thereby justifying the fact that he had been detained. The State claimed that it had transpired from the investigation that Mr. Acosta had died from a combination of alcohol and cocaine and that the blows had come from him hitting himself. Finally, the State maintained that the petitioners enjoyed ample guarantees under the internal legal system and wanted to use the Commission as a "fourth instance."

5. Based on its determinations of fact and law, the Inter-American Commission concluded that the State is responsible for violating the rights to life, humane treatment, and personal liberty, established in Articles 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, and 24 of the American Convention, in conjunction with the obligations established in Article 1.1 and 2 of the same instrument, to the detriment of José Delfín Acosta Martínez. The

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<sup>1</sup> In a communication received on May 9, 2006, Mr. Ángel Acosta Martínez, a brother of the alleged victim, reported that COFAVI would no longer sponsor the petition.

<sup>2</sup> IACHR. Report No. 36/13. Case 12.906. Admissibility, José Delfín Acosta Martínez and family July 11, 2013. The Articles of the American Convention declared admissible were: Articles 4 (right to life), 5 ( humane treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), 24 (equal protection before the law), and 25 (judicial protection).

<sup>3</sup> In a communication dated August 22, 2013, the petitioners reported that they were willing to initiate a friendly settlement procedure. The State was notified of that decision on January 14, 2014. In a communication dated April 3, 2014, the petitioners submitted a comprehensive reparation proposal, which was remitted to the State on January 22, 2015. In a note date December 1, 2017, the State proposed initiating a dialogue "without that implying acknowledgment of the deeds denounced." On April 19, 2018, the Commission relayed the State's proposal to the petitioners and asked them to indicate, within one month, whether they were interested in starting the aforementioned procedure. As of the date of this Report, the Commission had not received a reply from the petitioners.

Inter-American Commission likewise concluded that the Argentine State is responsible for violation of the rights to humane treatment, judicial guarantees, and judicial protection recognized in Articles 5.1, 8.1, and 25.1 of the American Convention taken in conjunction with Article 1.1 of that instrument, to the detriment of the family members of José Delfín Acosta Martínez identified in the relevant section of this report. The IACHR made the corresponding recommendations.

## II. POSITION OF THE PARTIES

### A. Petitioners

6. The petitioners stated that on April 5, 1996, José Delfín Acosta Martínez, a Uruguayan of African descent was detained when he was talking to a Brazilian, also of African descent, named Wagner Gonçalves Da Luz and his girlfriend. They pointed out that several people, including Wagner's brother, Marcelo Gonçalves Da Luz, rebuked the police for acting arbitrarily and that for that reason the police also arrested the young Marcelo.

7. They added that José Delfín Acosta told the police that he was a Uruguayan national and the young people were Brazilians; that he had been doing nothing wrong and that they had been detained arbitrarily and "evidently because they were black." The petitioners stressed that the three detainees were searched by the police, who ascertained that none of them was bearing arms for which they might have been accused of committing some crime. They added that all three detainees were taken to Police Station No. 5 of the Argentine Federal Police. The petitioners affirmed that José Delfín Acosta had been handcuffed and brutally beaten until he lost consciousness and was seriously wounded. They said that several witnesses saw him being taken out of the police station, naked on a stretcher, suffering convulsions, and being put into an ambulance in which he died. They insisted that it was the blows he had received that caused his death.

8. They maintained that the justification adduced by the authorities for arresting José Delfín Acosta was based on two arguments: i) an alleged anonymous complaint of rowdiness by someone drunk carrying a weapon; and ii) application of the "ban on drunkenness" edict in effect at that time. The petitioners argued that it had never been proved that the police had received such a complaint over the phone and that the police edicts authorizing the police to detain people disturbing the peace were repealed as unconstitutional in 1998.

9. The petitioners emphasized that José Delfín Acosta Martínez had devoted himself to defending the human rights of "Africans and persons of African descent", and to disseminating their culture and customs. They stated that his family members had done everything they could to throw light on what had happened but had been met with "systematized corruption." They said that the investigation judge had shelved the case twice, without pursuing the evidence provided by the plaintiffs in order to throw light on the facts of the case.

10. The petitioners reported that Ángel Acosta, José Delfín Acosta's brother, had felt forced to seek political asylum in Spain because of the telephone tapping, threats, and attacks to which he had been subjected.

11. In light of the above, the petitioners maintained that the State had violated the **right to humane treatment/personal integrity and right to life** of José Delfín Acosta, particularly since, while in the custody of the Argentine authorities, he had been beaten to death. They also argued that the State had violated José Delfín Acosta's **right to personal liberty**, since he had been detained unjustifiably and without being informed of the reasons for his detention.

12. They likewise stated that the Argentine State is responsible for violating the rights to **judicial guarantees** and **judicial protection**, given that the judge responsible for investigating the death of José Delfín Acosta twice decided to archive the case, without accepting testimony and evidence offered by family members, or confronting those involved and or ordering expert tests on José Delfín's clothes and belongings to prove that they had not been washed. The petitioners claimed that the authorities lacked

impartiality and objectivity and that the higher courts hearing the various appeals filed failed to conduct an in-depth investigation and merely endorsed the arguments of the court of first instance.

13. Finally, they pointed out that the right to **equal protection before the law** had been violated because that day, April 5, 1996, of all the people out on the street, the police decided to detain three citizens "who, strangely enough, were black and foreign." For that reason, the petitioners assert that the reasons for the detention of José Delfín Acosta were racist, not legal.

## **B. STATE**

14. The State reported that, according to the police, the operation had been carried out in response to a complaint of an armed, drunk person disturbing the peace. It asserted that there had been no violations of the **right to personal liberty** because the various witnesses of the arrest had stated that José Delfín Acosta had been out on the street drunk and disturbing the peace, which was sufficient reason for him to be detained by the appropriate authorities, in accordance with objectively established procedures.

15. Regarding the **right to humane treatment/personal integrity and the right to life**, the Argentine State asserted that it was not guilty of violating them since: i) the first autopsy performed on the alleged victim had shown that injuries ascertained were not such as to have caused his death and the autopsy performed in Uruguay had concluded that it was not possible to determine cause of death; ii) the death had been caused by a combination of alcoholic substances and cocaine, so that the police had had no option but to call an ambulance immediately, which they did; and iii) the alleged victim had beaten his head against the floor while he was at the police station, self-inflicting the wounds found on his body. Therefore, the Argentine State indicates that there are no grounds for assigning it responsibility in the instant case.

16. The State also stated that it had not violated the right to **judicial guarantees or protection before the law** because the petitioners had had the opportunity to resort to all bodies in the internal judicial system and to make their case before a judge. It likewise asserted that there is no evidence whatsoever to support the existence of any "objective" or "subjective" fear of a lack of independence or impartiality on the part of the judges intervening in the various courts in the internal judicial system. The State indicated that there was no basis in fact for the petitioners' argument that evidence submitted had been ignored because the only means of proof that had been rejected was the plaintiffs' demand to re-summons everyone who had already made statements in the case, some of them several times. In the State's view, the fact of the matter is that the petitioners are unhappy with the appraisal made of the evidence during the investigation. The State asserted that the petitioner's intention is for the Commission to act as a "fourth judicial instance."

17. Regarding the alleged violation of the right to **equal protection before the law**, the State maintained that "such a serious allegation cannot be based on mere suppositions, such as those entertained by the petitioners."

## **III. DETERMINATIONS OF FACT**

### **A. Police edicts in Buenos Aires and information regarding racial discrimination**

18. It is an undisputed fact that at the time referred to in this case there were police edicts authorizing the detention of people without an arrest warrant caught in flagrante delictu. Thus, "[d]uring 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 exceptions-. In that same period, the police institution in this city has been the Argentine Federal Police. ...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."<sup>4</sup>

19. The Inter-American Court has pronounced on those edicts, stating that "[...] there were police practices in Argentina, including the so-called razzias, detentions to verify identity and detentions under police edicts on misdemeanors [...] Razzias are incompatible with respect for fundamental rights, including presumption of innocence, existence of a court order for detention –except in situations of flagrancy- [...]"<sup>5</sup>

20. In the instant case, the State referred to those edicts and stated that José Delfín Acosta Martínez had been detained "in application of a drunkenness edict" which was in effect at the time.<sup>6</sup>

21. According to the National Institute against Discrimination, Xenophobia, and Racism (INADI),<sup>7</sup> "approval of the Urban Coexistence Code by the Legislature of the Autonomous City of Buenos Aires in March 1998 repealed the police edict system against municipal misdemeanors -- and hence the arbitrary detentions it had triggered -- and was a step forward in terms of respect for the fundamental rights of citizens. The most frequently used characterizations of misdemeanors described personal characteristics -- rather than forms of behavior - that were slanted against persons of a particular social status, sexual orientation or age."<sup>8</sup>

22. In 2001, the United Nations Committee on the Elimination of Racial Discrimination voiced concern over xenophobia against immigrants in Argentina, especially those from neighboring countries, asylum-seekers, and Afro-descendants. It also noted with concern "that there have been reports of police brutality committed on a variety of pretexts, on grounds of race, colour or ethnic origin."<sup>9</sup> More recently, the Committee has referred to "persistent structural discrimination against indigenous peoples and people of African descent and the invisibility of people of African descent in terms of their rights."<sup>10</sup>

23. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stated, in reference to his mission to Argentina in 2017, that he had been informed about a trend whereby the Buenos Aires Metropolitan Police and Argentine Federal Police enforce profiling in identity checks on the streets. The Rapporteur pointed out that "[t]he practice disproportionately affects migrants and people of African descent."<sup>11</sup>

## **B. The detention and death of José Delfín Acosta Martínez**

24. José Delfín Acosta Martínez was born on April 21, 1963, in Montevideo, Uruguay, the son of Miguel Ángel Acosta and Rosa Blanca Martínez. José Delfín was an Afro-descendant and an active defender of the rights of Africans and of persons of African descent. With his brother, Ángel Acosta Martínez, he co-founded the Grupo Cultural Afro and the Centro Cultural Afro in the City of Buenos Aires. He performed as a dancer and musician and taught at the Universidad del Tango in Buenos Aires. He gave candombe classes at the Centro Cultural Ricardo Rojas, taught capoeira martial arts, worked as a journalist for Mundo Uruguayo, and was a member of the Standing Committee of Uruguayan Representatives of Buenos Aires (CARUBA) of the Uruguayan Consulate in Buenos Aires.<sup>12</sup> These facts were not contested by the State.

<sup>4</sup> I/A Court HR. Case of Bulacio v. Argentina. Expert opinion of Máximo Emiliano Sozzo. Judgment of September 18, 2003.

<sup>5</sup> I/A Court HR. Case of Bulacio v. Argentina Merits, Reparations and Costs. Judgment of September 18, 2003, par. 137.

<sup>6</sup> State's report of April 29, 2005.

<sup>7</sup> Established by Law No. 24.515 of 1995 as a dependency of the Ministry of Justice and Human Rights.

<sup>8</sup> INADI. *La Discriminación en Argentina*. [Discrimination in Argentina] *Diagnóstico y respuestas*. [Diagnostic assessment and responses] July 2005

<sup>9</sup> Committee on the Elimination of Racial Discrimination. CERD/C/304/ Add.112 of 27 April 2001.

<sup>10</sup> Committee on the Elimination of Racial Discrimination. CERD/C/ARG/CO/21-23 of 11 January 2017.

<sup>11</sup> Text 7. Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina. A/HRC/RES/41/Add.1, 18 April 2017.

<sup>12</sup> Appendix 1. Initial petition of June 6, 2002.

25. The Commission notes that there is no dispute among the parties regarding the fact of José Delfín Acosta Martínez's detention by Federal Police on April 5, 1996, when he was outside a club in downtown Buenos Aires; nor about the fact that he died in an ambulance a few hours after his detention. The dispute revolves around the matter of whether his arrest was illegal and arbitrary and around the circumstances of his death.

26. In her testimony, given that same day (April 5), Romina Bairo, a friend of Marcelo Gonçalves Da Luz, declared that:

"a man aged about 30, of average height, dark skin, and completely bald [...] tried to talk to her [...] When that person had approached her, she noted [illegible] drunk [...]. She remembered that he asked that they take him home, which was in Palermo, but he gave no address, and said he was a tango dancer but could not devote himself full time to that profession because he had two major problems, which were drugs and alcohol [...] That she saw that young [illegible] hanging round the bar and that, when he saw a police patrol car passing by [illegible], he had immediately gone into the bar, in order [illegible] not to be seen by the police [...] Back in the street, she sees her friend WAGNER leaning with open hands against the patrol car [...] while the other youth was being searched by one of the policemen (sic). Then they searched her friend and the police told him to get into the patrol car and then, seeing that, her other friend and also brother of WAGNER, MARCELO, rushed over to try and stop the uniformed police from taking away his brother, at which point he was [illegible] by those policemen and both brothers were arrested along with the [illegible] bald man. Later, accompanied by her friend Analia MASELLO [...], she went to the police station [...] and saw an ambulance drive in and that immediately they brought out "the bald guy" on a stretcher, who she saw "trembling".<sup>13</sup>

27. The Commission notes that on April 8, 1996, when she added to her statement, Romina Bairo clarified that "she had not been molested. That, in reality, he had gone up to her outside the Maluco Beleza club but had not molested her. [...] That he had a glass of some alcoholic drink in his hand, but he was not shouting [*no girtó (sic)*] or excited, until they started pushing him into the patrol car. At that point, he began shouting and wrestling."<sup>14</sup>

28. In her statement given on April 5, 1996, Analía Masello said that when she came out of the "MALUCO BELEZA" club

she had asked her friend, whom she calls "MARCELO", to help her change a tire on her car. While Marcelo was doing that, an individual whom she had never seen before came out of the club [...]. The bald guy asked her to take him to Palermo, which the declarant refused to do because there was no space in her car. Nevertheless, the stranger insisted that she take him [...] and she thought he looked as if he was drugged and aggressive [...] From where they had been sitting in the bar, they saw that individual make his way to the opposite side of the street, where VAGNER (sic), MARCELO'S brother, [she explains that both are Brazilians] was with a girl, and began molesting them [...]. Moments later two patrol cars arrived, evidently after someone had called, and detained VAGNER and the BALD GUY. The bald guy began shouting "we have got nothing to do with this" [...] at which point the declarant and her friends went up to the police and told them that VAGNER (sic) had not been the one making the fuss. The police told them to go away. They saw that when the police searched VAGNER (sic) and saw his papers, they put him into one of the cars, and the bald guy into the other. At those (sic) point, MARCELO insisted on telling the police that his brother had nothing to with the matter and ran towards them. The police arrested MARCELO, too, and a scuffle ensued [...]<sup>15</sup>

<sup>13</sup> Appendix 2. Statement by Romina Bairo on April 5, 1996. Attached to the initial petition.

<sup>14</sup> Appendix 3. Statement by Romina Bairo on April 8, 1996. Attached to the initial petition.

<sup>15</sup> Appendix 4. Statement by Analía Masello on April 5, 1996. Attached to the initial petition.



29. Analía Masello stated that, with Romina Bairo, they had gone to Police Station No. 5 to explain what had happened and that "by then, it was around 8:30 a.m., while they were waiting, she heard shouts and noises, as if they were in a madhouse, coming from the back of the police stations, so they went there and saw the policemen from the patrol cars, and asked them what was going on, to which they had replied that it was the bald guy who was out of control [...]"<sup>16</sup> She also declared that she had seen "how they were lifting a stretcher into an ambulance with the bald guy shaking as if he had had epileptic fit."<sup>17</sup>

30. The Commission observes that in an addition to her statement on April 8, 1996, Analía Masello stated that "she wishes to correct her previous statement which states that she had seen the now dead man being aggressive and that that was not the case [...]"<sup>18</sup>

31. In his testimony given on April 6, 1996, police officer Blas Luis Bogado stated that two young ladies had arrived at Police Station No. 5, had identified themselves as friends of the Brazilians, and has stated that "it was the bald guy [...] who had [mol? illegible]ested them in various ways on the way out of the dance club."<sup>19</sup>

32. In his testimony given on April 5, 1996, Fernando Alberto Ibarra, a doorman at the MALUCO BELEZA" club said that in the early hours of that day he had denied entry into the club to a "dark-skinned, bald male [...] who was already acting aggressively and insisting on entering the premises [...]"<sup>20</sup> When giving his statement, asked "whether the "bald" man had been beaten while being arrested and/or being [illegible] into the patrol car, HE REPLIED: that at no point had he seen any mistreatment [illegible] despite the resistance he was putting up resistance to being placed in the car [...]"<sup>21</sup> In the statement he gave on April 9, 2018, that same Fernando Alberto Ibarra said that " that person was drunk, [...], stumbling, and uncoordinated in his movements [...], that at least with the declarant and the other members at the table in the bar they went to when the club closed, the aforementioned individual had not been aggressive."<sup>22</sup>

33. In his statement given on April 5, 1996, Wagner Gonçalves Da Luz also stated that "the bald guy", whom he did not know, had approached him and moments later some police had arrived in patrol cars and had him put his hands on one of them to search him, "while they took the bald guy to the sidewalk and placed him against the wall." They then arrested them and took them to Police Station No. 5, where he could see nothing because from his cell there was no view of other units in the Police States; nor had he heard anything unusual."<sup>23</sup> In a statement made on April 11, 1996, he said that "while I was changing a vehicle tire, Acosta appeared and judging by the way he spoke and stumbled while he walked was drunk, but he was not incoherent."<sup>24</sup>

34. The statement by Wagner Gonçalves Da Luz concurs with the accounts given by his brother, Romina, and Analía regarding the facts of the detention and transfer to Police Station No. 5. He told how "he was with talking his brother in the cell and heard shouting, but could not make out what was going on. There here in the police station he did not see the third person arrested again and did not know who it was who had been shouting."<sup>25</sup> In a statement given on April 11, 1996, Marcelo Da Luz stated: "that inside the Police Station [...] the three had been standing in a corridor. [...] they took the bald guy to a place that the dissident individual (*el disidente*) and his brother went by [...] while his brother and the declarant were taken to a kind of room with bars that the policemen did not lock."<sup>26</sup>

<sup>16</sup> Appendix 4. Statement by Analía Masello on April 5, 1996. Attached to the initial petition.

<sup>17</sup> Appendix 4. Statement by Analía Masello on April 5, 1996. Attached to the initial petition.

<sup>18</sup> Appendix 5. Statement by Analía Masello on April 08, 1996. Attached to the initial petition.

<sup>19</sup> Appendix 6. Statement by Blas Luis Bogado on April 6, 1996. Attached to the initial petition.

<sup>20</sup> Appendix 7. Statement by Fernando Alberto Ibarra on April 5, 1996. Attached to the initial petition.

<sup>21</sup> Appendix 7. Statement by Fernando Alberto Ibarra on April 5, 1996. Attached to the initial petition.

<sup>22</sup> Appendix 8. Statement by Fernando Alberto Ibarra on April 9, 1996. Attached to the initial petition.

<sup>23</sup> Appendix 9. Statement by Wagner Gonçalves Da Luz on April 5, 1996. Attached to the initial petition.

<sup>24</sup> Appendix 10. Appendix 9. Statement by Wagner Gonçalves Da Luz on April 11, 1996. Attached to the initial petition.

<sup>25</sup> Appendix 11. Statement by Wagner Gonçalves Da Luz on April 5, 1996. Attached to the initial petition.

<sup>26</sup> Appendix 12. Statement by Wagner Gonçalves Da Luz on Thursday, April 11, 1996. Attached to the initial petition.

35. Worth noting, in particular, is the statement by Sergeant Domingo Alberto Oliva:

[...] so, when the police car drew up, two males appeared to be together as if they were embracing. So together with the driver we proceeded to separate them, taking the necessary precautions to see whether they were armed. The declarant ran to the sidewalk with the more robust of the two men, who had dark skin and was bald, while the driver, that is to say Corporal (*Cabo 1ro*) Lezcano, stayed with the other detainee. After ascertaining that his detainee was not armed, the declarant questioned him about his particulars [...]. After being notified of what was happening, Deputy Inspector Aguilar, told the deponent to check over the radio whether the detainee was subject to any kind of restraining order. To that end, the deponent went to patrol car 305 and did as told, and found out there was no such order (*diligencia negativa*). At that point he, the deponent, was ordered to put the detainee into the patrol car, at which point the detainee became aggressive and shouted that YOU ALWAYS HAVE IT IN FOR BLACKS, and was extremely annoyed that police personnel had withheld his papers.<sup>27</sup>

36. For his part, Corporal González Alfredo, one of the policemen who had detained Messrs. Da Luz and Acosta, declared regarding the latter:

[...] he was searched on top of his clothes, whereby nothing criminal was found, and after that it was ascertained over the radio that the individual was not subject to any restraining order, given that he continued to be extremely upset by the police presence, the officer in charge took the decision to put him into the patrol car and take him to the police station [...].<sup>28</sup>

37. The Commission notes that, in the testimony provided by Romina Bairo and Analia Masello on April 8, 1996, the former stated that "they wanted to put him [José Acosta] in the patrol car. At that point he began to shout and to struggle to avoid being put into the patrol car [...]."<sup>29</sup> For her part, Masello said that "[Acosta] got out of the patrol car and was upset, then several policemen, she did not know how many, forced him into the car."<sup>30</sup>

38. Mrs. Bárbara McGuire declared that "the patrol cars stopped next to the bar and some four officers got out. They went up to one of the Brazilians and one of the officers with a gun in one hand began searching him. At that point, Acosta intervened, saying that he was a Uruguayan citizen [...]. One of the police officers asked him for his I.D. and then immediately tossed it on the ground. The Uruguayan asked him to pick it up and return it to him, which the officer did."<sup>31</sup> The statement by Verónica Brotzman emphasizes that "at some point José said 'I am a Uruguayan, they are Brazilians who came to dance and you should leave them in peace.' He said it not in an authoritarian way but in a conciliatory tone [...]. Marcelo, his brother, got frightened and began to shout at the police, in response to which they took him too and put him in the patrol car [...]. She said she could distinguish two phases: before and after the detention. In the first he was not upset, but in the second he was, but because of the detention itself and the incident with his I.D."<sup>32</sup> Regarding his state of mind, "McGuire asserted that he was normal and cheerful and was not being incoherent, while Brotzman reporting that he looked normal."<sup>33</sup>

39. In testimony given on April 5, 1996, Inspector Claudio Oscar Cervera, who was at the police station at the time, stated that:

<sup>27</sup> Appendix 13. Statement by Sergeant Domingo Alberto Oliva on April 5, 1996. Attached to the initial petition.

<sup>28</sup> Appendix 14. Statement by Corporal Alfredo González on April 5, 1996. Attached to the initial petition.

<sup>29</sup> Appendix 3. Statement by Romina Bairo on April 8, 1996. Attached to the initial petition.

<sup>30</sup> Appendix 5. Statement by Analia Masello on April 08, 1996. Attached to the initial petition.

<sup>31</sup> Appendix 15. Statement by Bárbara McGuire on April 24, 1996. Attached to the initial petition.

<sup>32</sup> Appendix 16. Statement by Verónica Brotzman on April 24, 1996. Attached to the initial petition.

<sup>33</sup> Appendix 17. Minutes in the file of April 25, 1966. Attached to the initial petition.



[...] the aforementioned detainee first [identified himself? illegible] as José DELFIN ACOSTA, an Uruguayan national, of 32 years of age [...] He was under the influence of [illegible] alcohol or some other addictive substance because of the abnormal and aggressive [way he was behaving? illegible] [...] For that reason he ordered the guard on duty to enter his name in the Detainee Register, accused of the misdemeanors of "DRUNKENNESS AND OTHER INTOXICATIONS, Article [illegible], Section One, and DISORDERLY CONDUCT, Article 1.b [...] Detainee ACOSTA's behavior was extremely aggressive from the moment he entered the Police Station, shouting insults at the police personnel, such as: "YOU SONS OF BITCHES, I AM GOING TO SHIT ON ALL OF YOU BECAUSE I AM THE SON OF A JUDGE. I AM GOING TO APPEAL AGAINST EVERYTHING YOU SAY ABOUT ME. IF YOU WANT ME TO PAY YOU I'LL GIVE YOU WHAT I HAVE AND YOU STOP FUCKING AROUND WITH ME, YOU SONS OF BITCHES [...] YOU'RE SHITTING ON ME BECAUSE I'M BLACK BUT IT'S ME THAT AM GOING TO SHIT ON YOU", throwing all his clothes at them, including is [underwear? illegible], until he was completely naked."<sup>34</sup>

40. Inspector Cervera claimed that Mr. Acosta became more aggressive, so that he had felt obliged to handcuff him and that "deliberately and intentionally, from where he had been sitting, he had thrown himself head [first? illegible] on the ground, striking the floor hard with his head, while proclaiming: 'NOW CALL AN AMBULANCE FOR ME YOU SONS OF BITCHES BECAUSE I AM GOING TO ACCUSE YOU OF BEATING ME UP. NOW YOU'LL SEE HOW I'LL HAVE YOU SENT TO PRSN (sic)."<sup>35</sup> He said that, shortly after a SAME ambulance arrived with Dr. Guillermo José Brizuela Barros and while the doctor was examining him, "the patient showed signs of an epileptic seizure, banging the name of his neck against the floor until the deponent managed to hold his head [...] He was placed on a stretcher and put in the ambulance to be taken to Hospital."<sup>36</sup>

41. The Commission notes that on the same day statements were made by Corporal Omar Justo Ojeda and Sergeant Humberto Mario Echegaray, who accounts match that of Inspector Cervera.<sup>37</sup> Corporal Zulma Rosalía Orellana gave a similar account, but added that she had talked to two young women, one of whom had asked her who was shouting, "to which the deponent had [asked ? illegible] who they had come with, to which they had answered: "WE CAME WITH THE BRAZILIANS, WHO ARE FRIENDS OF OURS." The deponent asked them if "the bald guy" was with them, to which they had answered: "THE BALD GUY IS THE ONE WHO WAS BOTHERING US INSIDE THE CLUB. HE OFFERED US DOPE (COCAINE). HE IS THE ONE WHO SHOULD BE DETAINED."<sup>38</sup>

42. In his testimony given on April 5, Dr. Brizuela stated that when he was examining José Delfin Acosta "[...] the patient suffered a convulsion lasting between 5 and 10 seconds, as a result of which there was a slight blow on the occipital region against the floor. After that he had put him on a stretcher and placed into the ambulance [...]. Later, shortly before arriving at the hospital, his heart had stopped beating. Manual attempts to resuscitate him were unsuccessful and he died."<sup>39</sup> On April 11, 1996, in additions to Dr. Brizuela's testimony, he was asked whether he had noticed signs of blows to the body of the deceased, to which he replied that "he had not looked into that<sup>40</sup> (*"no reparó en ese detalle"*); asked by the judge whether he would have noticed if the individual had been beaten up, Dr. Brizuela answered yes, given that in such cases there were obvious marks and bruising."<sup>41</sup> He stated furthermore that "he had no wound that was bleeding nor blood stains on any part of his body."<sup>42</sup>

<sup>34</sup> Appendix 18. Statement by Inspector Claudio Oscar Cervera on April 5, 1996 Attached to the initial petition.

<sup>35</sup> Appendix 18. Statement by Inspector Claudio Oscar Cervera on April 5, 1996 Attached to the initial petition.

<sup>36</sup> Appendix 18. Statement by Inspector Claudio Oscar Cervera on April 5, 1996 Attached to the initial petition.

<sup>37</sup> Appendix 19. Statements by Corporal Omar Justo Ojeda and Corporal Humberto Mario Echegaray, on May 5, 1996. Attached to the initial petition.

<sup>38</sup> Appendix 20. Statement by Corporal Zulma Rosalía Orellana on April 5, 1996. Attached to the initial petition.

<sup>39</sup> Appendix 21. Statement by Guillermo José Brizuela Barros on April 5, 1996. Attached to the initial petition.

<sup>40</sup> Appendix 22. Statement by Guillermo José Brizuela Barros on April 11, 1996. Attached to the initial petition.

<sup>41</sup> Appendix 22. Statement by Guillermo José Brizuela Barros on April 11, 1996. Attached to the initial petition.

<sup>42</sup> Appendix 22. Statement by Guillermo José Brizuela Barros on Thursday, April 11, 1996. Attached to the initial petition.

43. The ambulance driver, Diego José Posada, declared on April 5, 1996 that "[...] he had found a completely naked man lying on the floor [...]. Immediately the deponent had placed the man on the stretcher [...] at which point his eyes were shut, and his exact state could not be ascertained [...]"<sup>43</sup> In his statement on April 8, he added that "when he took the patient to the ambulance, he did so very quickly and did not notice whether or not the patient was showing any signs of convulsions."<sup>44</sup>

44. Oscar Darío Almada, stated that "he was working as a taxi driver and that on that day, at around 8:30 a.m., as he was driving past the police station, he was asked to act as a witness, because they had a person detained for drunkenness and he should witness what steps were being taken. [...] there were several policemen around a person with a shaved head [...], who appeared to be completely beside himself and very nervous [...] he began throwing everything he had in different directions, then he took off his shoes and threw them away with all his clothes, so that he was left completely naked [...] No sooner had they handcuffed him, he managed to break away from those holding him, threw himself on the floor, and began hitting his head on the floor, shouting that he would have them all sent to jail and they should call an ambulance because he was injured [...]"<sup>45</sup> On April 9, 1996, Mr. Darío Almada ratified his statement, adding that "the man had been out of his mind, shaking his whole body all the time uncontrollably [...]" Asked by S.S. to say whether in the whole time he was present in the room and until he left it he had seen policeman strike [Acosta], he said no. That obviously, given the state he was in, whenever he threw himself against the ground the police officers in charge had had to take hold of him firmly. But, he reiterated, they never struck him."<sup>46</sup>

45. On that same day, April 5, 1996, Ángel Acosta, José Delfín Acosta's brother, stated that "as a child José had suffered epileptic incidents, for which he had been treated at the time [...]. He know from what his brother had told him years ago that José could not receive any blow to the head as that could trigger a seizure, but that recently he thought that José had nothing to treat himself with and that he would have known if he had had something [...]"<sup>47</sup> In the statement, he confirmed that his brother's belongings had been delivered to him and that he had received notification to go to the judicial morgue."<sup>48</sup>

46. It is worth pointing out that in a subsequent statement, made on April 22, 1996, Ángel Acosta said that "while [he] was waiting for William to arrive at the police station, they insisted [something he had not commented on earlier] that his brother had been epileptic, and that he repeatedly told them that no he wasn't, that he had never had an epileptic fit and had never suffered from epilepsy [...]. I told them that when my brother was tiny my mother had taken him to be tested to know whether he might have some sign of epilepsy. They interpreted that in their manner and hence the account you find in the document."<sup>49</sup> He also stated that at the police station they had told him how his brother's death had occurred, "but it all seemed very strange to me, because I was certain that my brother was not using alcohol [...] and it was even stranger that they should deny him entry into that club [...] where he was treated like a friend of the house. He never had to pay to get in [...]" He said that "everything they told me did not ring true of my brother."<sup>50</sup> He mentioned the "stories my brother told about the mistreatment he had suffered his whole life just because he was black, that they arrested him for no reason and beat him at police stations. So he could not believe he had made all that fuss, because obviously it would have made his situation worse."<sup>51</sup>

47. During a testimony taken on April 10, 1996, Carlos William Chagas, a Uruguayan friend of José Delfín Acosta was asked whether he knew that José was recently suffering from epilepsy and he replied "that he did not think he had been suffering that disease but that when they were children in Uruguay, Acosta had mentioned that possibility to him."<sup>52</sup> He was also asked if he knew whether the alleged victim habitually

<sup>43</sup> Appendix 23. Statement by Diego José Posada on April 9, 1996. Attached to the initial petition.

<sup>44</sup> Appendix 23. Statement by Diego José Posada on April 9, 1996. Attached to the initial petition.

<sup>45</sup> Appendix 24. Statement by Oscar Darío Almada on April 5, 1996. Attached to the initial petition.

<sup>46</sup> Appendix 25. Statement by Oscar Darío Almada on April 9, 1996. Attached to the initial petition.

<sup>47</sup> Annex 26. Statement by Angel Acosta on April 5, 1996. Attached to the initial petition.

<sup>48</sup> Appendix 26. Statement by Angel Acosta on April 5, 1996. Attached to the initial petition.

<sup>49</sup> Appendix 27. Statement by Angel Acosta on April 22, 1996. Attached to the initial petition.

<sup>50</sup> Appendix 27. Statement by Angel Acosta on April 22, 1996. Attached to the initial petition.

<sup>51</sup> Appendix 27. Statement by Angel Acosta on April 22, 1996. Attached to the initial petition.

<sup>52</sup> Appendix 28. Statement by Carlos William Chagas on April 10, 1996. Attached to the initial petition.

drank alcohol, to which he replied that he knew that he drank but had never seen him drink in excess, so as to be drunk or be lying flat on the floor. He was asked whether Mr. Acosta consumed alkaloids, to which he replied that at some time or other he had heard that, but could not say so definitely as he had never seen it."<sup>53</sup> On that occasion, he asked to supplement the statement he had given on April 5, to record the fact that "from the start he had found the police "over-friendly"<sup>54</sup> and that when he had asked whether the police had beaten Delfín Acosta, "the officers had unanimously stated that at no time had they attacked or struck the detainee."<sup>55</sup> He added that "the officer who took down Ángel Acosta's statement pressured him to say whether the deceased had been an epileptic."<sup>56</sup>

48. Both Ángel Acosta and William Chagas went to the morgue to identify the body of José Delfín Acosta and in their testimony both stated that they had noted bruising, bumps, and purple marks.<sup>57</sup> Both Ángel Acosta and William Chagas likewise declared that when the belongings of the alleged victim were returned certain items were missing, such as the keys of his house.<sup>5859</sup>

49. Ángel Acosta pointed out that when he got home he noticed that his brother's shirt showed no signs of perspiration, while his pants had dark brown stains.<sup>60</sup> Chagas also "mentioned that Acosta's shirt did not smell of either sweat or tobacco [...]. That regarding the pants, the deponent said it had what looked like black stains [...]"<sup>61</sup> Ángel stated that subsequently he had gone to the "Maluco Beleza" club and had been able to talk to the Da Luz brothers, who told him that "the police had put guns to their head [...] Wagner told me that they were not looking for my brother, they had gone in search of an armed man wearing a black leather jacket. My brother, upon seeing all that from inside the bar, went out and identified himself as a Uruguayan national residing legally in Argentina and told the police that their attitude toward those two men just because they were black struck him as incorrect."<sup>62</sup>

### **1. Autopsies performed on the body of José Delfín Acosta**

50. On April 5, 1996, Dr. José Ángel Patito, of the Forensic Medicine Team performed an autopsy on the body of José Delfín Acosta, stating that he had died at 8:45 on the same day inside a SAME ambulance when it was entering the Ramos Mejía hospital.<sup>63</sup> The examination for trauma registered the following injuries:

In the right lower back a bluish ecchymotic bruise;  
 In the middle of the back at the first lumbar vertebra level, a bluish ecchymotic bruise;  
 In the interparietal area at the back of the scalp: three scabby abrasions;  
 On the ulnar edge of the middle third of the right forearm, a bluish ecchymotic bruise;  
 On the whole perimeter of the left wrist, two bluish ecchymotic stripes;  
 In the left front temporal area: a bruise measuring 2 x 3 cm.<sup>64</sup>

51. The autopsy established "the cause of death of JOSÉ DELFÍN ACOSTA as: pulmonary edema. Intrapulmonary bleeding."<sup>65</sup>

<sup>53</sup> Appendix 28. Statement by Carlos William Chagas on April 10, 1996. Attached to the initial petition.

<sup>54</sup> Appendix 28. Statement by Carlos William Chagas on April 10, 1996. Attached to the initial petition.

<sup>55</sup> Appendix 28. Statement by Carlos William Chagas on April 10, 1996. Attached to the initial petition.

<sup>56</sup> Appendix 28. Statement by Carlos William Chagas on April 10, 1996. Attached to the initial petition.

<sup>57</sup> Appendix 29. Statement of Carlos William Chagas on April 10, 1996 and statement of Angel Acosta on April 22, 1996. Attached to the initial petition.

<sup>58</sup> Appendix 28. Statement by Carlos William Chagas on April 10, 1996. Attached to the initial petition.

<sup>59</sup> Appendix 26. Statement by Angel Acosta Martínez on April 5, 1996. Attached to the initial petition.

<sup>60</sup> Appendix 27. Statement by Angel Acosta on April 22, 1996. Attached to the initially lodged petition.

<sup>61</sup> Appendix 28. Statement by Carlos William Chagas on April 10, 1996. Attached to the initial petition.

<sup>62</sup> Appendix 27. Statement by Angel Acosta on April 22, 1996. Attached to the initial petition.

<sup>63</sup> Appendix 30. AUTOPSY NO. 673/- Time 8.45 (P-1877/96) on April 5, 1996. Attached to the initial petition.

<sup>64</sup> Appendix 30. AUTOPSY NO. 673/- Time 8.45 (P-1877/96) on April 5, 1996. Attached to the initial petition.

<sup>65</sup> Appendix 30. AUTOPSY NO. 673/- Time 8.45 (P-1877/96) on April 5, 1996. Attached to the initial petition.

52. In his statement before the Court of First Instance No. 10, Dr. José Ángel Patito pointed out that "(...) the deceased was not found to have and external or internal injuries likely to cause death. Second, traumatic injuries were found, none of which was likely to have causes death, and which were produced by a blow or knocking with or against hard bodies or surfaces. [...] [...]. Third [...] he recognized as one of the causes the action of neurotoxic substances, [...]; the results of toxicological or histopathological exams were still pending [...]".<sup>66</sup>

53. The Forensic Medicine team's radiology department determined "that there was no radiological evidence of osteoarticular alteration or of metallic density factors typical of a bullet."<sup>67</sup>

54. For its part, on April 17, 1996, the toxicological and forensic chemistry laboratory stated that it has found "ETHYL ALCOHOL IN THE BLOOD... 2.8 grams/liter, COCAINE (sic) IN BLOOD .....5.16 micrograms/milliliter, COCAINE (sic) IN THE NOSTRIL (*hipoxado nasal*)... Positive."<sup>68</sup>

55. The anatomical-pathological report, based on examination of skin fragments from the right and middle lumbar region, brain, heart, lung fragment, liver and kidneys found:

- Pulmonary congestion and bleeding. Food intake (*aspiración alimenticia*). Birefringent crystals polarizing light in airways (bronchi) and air sacs (alveoli).
- Subcutaneous bleeding in the lumbar region
- Renal passive congestion. Medullary fibroid.
- Congestion and diffuse brain edema.<sup>69</sup>

56. In his autopsy report of April 22, 1996, Dr. José Ángel Patito concluded that "death was caused by the combined action of ethyl alcohol and cocaine, because taken into the body together they unite forming the so-called ethyl cocaine or coca ethylene compound [...] it may therefore be concluded that the death of JOSE DELFIN ACOSTA was due to severe intoxication with cocaine and ethyl alcohol."<sup>70</sup>

57. The bodily remains of Mr. José Delfín Acosta were repatriated to Uruguay, where proceedings were initiated and a second autopsy was ordered. The Forensic Technical Institute of Uruguay determined that based on the toxicological study data obtained in the autopsy performed in Argentina, " the levels of alcohol and cocaine in the deceased's blood were sufficiently high to be able to estimate that at the moment of death they were much higher," because " the average life span of cocaine is 0.7 to 1.5 hours (40 to 90 minutes in a live person)."<sup>71</sup> Based on that analysis, it was determined that "the longer it takes for the test to be carried out, the higher the dose that must have been required to yield 5.16 micrograms per milliliter, [...] that means that [...] he must have been in a state of coma at the time of his arrest, based on the fact that alcohol and cocaine are mutually reinforcing."<sup>72</sup>

58. As will be noted in the section on internal proceedings, based on the findings of the autopsy performed in Uruguay, family members asked the investigating judge in Argentina to reopen the case.<sup>73</sup> He did so and ordered that a Medical Board be formed.<sup>74</sup> The plaintiffs designated Dr. Hugo Ricardo Nandin as the physician representing them.<sup>75</sup>

<sup>66</sup> Appendix 31. Statement by José Angel Patito on April 8, 1996. Attached to the initial petition.

<sup>67</sup> Appendix 32. Judicial forensic medical radiological department of the Federal Capital, autopsy No. 673, radiological report (X-ray No. 429-432) of April 15, 1996. Attached to the initial petition.

<sup>68</sup> Appendix 33. Toxicology and forensic chemistry lab, April 17, 1996. Attached to the initial petition.

<sup>69</sup> Appendix 34. Anatomical-pathological Report No. 17256 on Jose D. Acosta. Autopsy No. 0673/96 of April 19, 1996. Attached to the initial petition.

<sup>70</sup> Appendix 30. Autopsy Report No. 673/96 (P. No. 11877.96) of April 22, 1996. Attached to the initial petition.

<sup>71</sup> Appendix 35. 13th Criminal Court of First Instance, Forensic Board, Montevideo, November 15, 1996. Attached to the initial petition.

<sup>72</sup> Appendix 35. 13th Criminal Court of First Instance, Forensic Board, Montevideo, November 15, 1996. Attached to the initial petition.

<sup>73</sup> Appendix 36. Request to reopen the case, undated. Attached to the initial petition.

<sup>74</sup> Appendix 37. Court of First Instance No. 10, Official Letter 7042 of May 18, 1998. Attached to the initial petition.

<sup>75</sup> Appendix 38. Appointment of expert/ Proposed items for the report - proposal for testimony of May 22, 1998. Attached to the initial petition.

59. On June 26, 1998, the Medical Board submitted its report, replying to the appraisal items requested, which included some issues raised by the plaintiffs. The report states that it took into account all the expert tests and appraisals conducted in the case, "as well as the findings of the autopsy performed in Uruguay." Worth noting in the Board's responses is the following:

Mr. José Delfín Acosta was not necessarily unconscious when he was taken in since an alcohol level of 2.80 grams per thousand is associated with depression of the central nervous system while, on the contrary, cocaine creates euphoria and excites the central nervous system.

[...]

A reading of the two autopsies tells us that the traumas described therein are the result of a blow or knocking with or against a hard object and from a forensic medical point of view nothing more can be said to amplify that conclusion.

[...]

Once a person dies, vital metabolic functions cease, so that the levels of alcohol and cocaine found in the autopsy are basically those at the time of death.<sup>76</sup>

60. The Medical Board told the investigating judge that the three experts met again on June 29, 1998 and "engaged in a thorough analysis of the material in the file on the case." The expert representing the plaintiffs pointed out that the amount of drugs could have been greater than indicated in the first autopsy, given the average life [effect span] of cocaine. He also stated that the injuries found on the deceased's skull were not such as to have been caused by self-inflicted injuries or convulsions, because "the police versions assert that Acosta 'deliberately threw himself head first on the floor' hitting his head in the floor, in which case the injuries would have been in the front or front-parietal region [...], but in no way the temporal region because the shoulders protect when falling. That area is, however, one that third parties can access."<sup>77</sup> For their part, the Forensic Medical team experts stated that the head injuries definitely came from a blow against a hard object and that the drug levels found in the body of the deceased were those present at the time of his death, given that "once a person dies vital metabolic functions cease [...]."<sup>78</sup>

### C. Domestic proceedings

61. There is an Official Letter dated April 5, 1996, signed by the Head of Police Station No. 5, Horacio Raúl Bussetti and addressed to the Director of the Ramos Mejía Hospital, asking for delivery of the body of José Delfín Acosta for remittal to the morgue for performance of the corresponding autopsy. The same letter records the fact that summary DUBIOUS DEATH proceedings were being initiated.<sup>79</sup> In a letter dated April 9, 1996, José Delfín Acosta's mother, Blanca Rosa Martínez, asked to be considered a plaintiff, and she brought with her the clothes her son had been wearing when he was detained and asked that tests be carried out to ascertain whether they had been washed.<sup>80</sup> In an official write dated April 10, 1996, Mrs. Martínez was included as a plaintiff in the preliminary proceedings.<sup>81</sup>

62. On April 9, 1996, the Uruguayan consul in Buenos Aires asked the judge in the case, Raúl Irigoyen, for information regarding the death of José Delfín Acosta.<sup>82</sup>

63. On April 11, 1996, Mrs. Rosa Blanca Martínez asked that statements by Rosa Blanca Martínez and by José Delfín's former partner be admitted.<sup>83</sup> She also asked that statements be taken from Ms.

<sup>76</sup> Appendix 39. Expert opinion of the Forensic Medical Team, written by Doctors Armando Maccagno, Roberto Lazcano, and Juan Romi, dated June 26, 1998. Attached to the initial petition.

<sup>77</sup> Appendix 40. Expert report by Dr. Hugo Ricardo Nandin. Attached to the initial petition.

<sup>78</sup> Appendix 39. Expert opinion of the Forensic Medical Team, written by Doctors Armando Maccagno, Roberto Lazcano, and Juan Romi, dated June 26, 1998. Attached to the initial petition.

<sup>79</sup> Appendix 41. Unnumbered Official Letter of Police Station 5, from Horacio Raúl Bussetti to the Director of the Ramos Mejía Hospital, dated April 5, 1996. Attached to the initial petition.

<sup>80</sup> Appendix 42. Presentation of the lawsuit on April 9, 1996. Attached to the initial petition.

<sup>81</sup> Appendix 43. Official writ (*auto*) of April 10, 1996. Attached to the initial petition.

<sup>82</sup> Appendix 44. Fax No. 371.8328 of April 9, 1996 from the Uruguayan consulate in Buenos Aires. Attached to the initial petition.



Barbara McGuire and Ms. Verónica Andrea Brotzman, because "both of them witnessed the detention procedure [...] and could point out that the police operation had not initially been directed against José Delfín, but rather against of the young Brazilian men [...]."<sup>84</sup>

64. Statements were taken from the persons presented by the plaintiffs, as well as from Oscar Dario Almada, Romina Bairo, Analía Masello, Fernando Ibarra, Wagner Da Luz, Marcelo Da Luz, Claudio Abbondanza, Claudio Cervera, Omar Ojeda, Humberto Echegaray, Carlos William Chagas, Guillermo Brizuela Barros, Diego Posada, Zulma Orellana, Domingo Oliva, Darío Almada, Marcelino Lezcano, González Alfredo, and Fernández Roberto. Relevant contents of some of the statements were cited in the foregoing section of this report.

65. On April 25, 1996, the investigating judge, Raúl Eduardo Irigoyen, ruled that "the aforementioned hypotheses having been disproved, the undersigned reached the inexorable conclusion that no crime exists in this docket. I therefore RESOLVE to archive this proceeding No. 22.190/96, where no crime is discernible."<sup>85</sup>

66. As regards the request by Mrs. Martínez for expert tests to be carried out on her son's clothes, it is to be noted that in the same minutes of the file, the judge declared "It is worth noting the insistence of the plaintiffs [...] regarding the clothes the deceased had been wearing, the state of which is irrelevant given the evidence accumulated.- Indeed, the same doctor who had been in direct contact with José Acosta in Police Stat, so that the stains on the pants are just dirtiness; nor are the remarks about the shirt relevant [...]."<sup>86</sup>

67. The plaintiffs asked for the case to be reopened, especially since the conclusions of the autopsy performed in Uruguay "add to the doubts about the causes of José Delfín Acosta Martínez's death [...]."<sup>87</sup> On May 12, 1998, an order was issued to reopen the investigation, in order to elicit a new forensic report by a Medical Board. That report was issued on June 26 of the same year, as mentioned in the foregoing section.

68. On July 17, 1998, the plaintiffs challenged the Medical Board's report because in their view "the forensic doctors based their case on facts that cannot be considered proven, but when taken to be proven alter the vision of what happened [...] the forensic experts cannot based their case exclusively on data taken from police inquiries, without scientifically proving why they based their view on them [...]."<sup>88</sup> On October 21, 1998, the Medical Board -- including the expert representing the plaintiffs -- replied to the queries regarding their first report, as detailed in the foregoing section.<sup>89</sup> The plaintiff's expert also replied to the questions put to him personally.<sup>90</sup>

69. On November 17, 1998, the plaintiffs asked for another Medical Board to be formed with members of the Gendarmería Nacional. They also asked the investigating judge to delve deeper into the case as there were "sufficient contradictions as to what actually happened."<sup>91</sup> On December 23, 1998, at the request of the plaintiffs, Marcelo Gonçalves Da Luz submitted a statement regarding the statements by Fresco and Brotzman, indicating that "at no time did he say...the things they say I said. Specifically, he says that [...] neither the declarant nor his brother Wagner were hit or maltreated by the police, who had simply driven them to the police station in the patrol car [...] that neither the declarant nor his brother had seen the police

[... continuation]

<sup>83</sup> Appendix 45. Note written by Mrs. Blanca Rosa Martínez on April 11, 1996. Attached to the initial petition.

<sup>84</sup> Appendix 45. Note written by Mrs. Blanca Rosa Martínez on April 11, 1996. Attached to the initial petition.

<sup>85</sup> Appendix 17. The National Judiciary. Minutes in the file of April 25, 1996. Attached to the initial petition.

<sup>86</sup> Appendix 17. The National Judiciary. Minutes in the file of April 25, 1996. Attached to the initial petition.

<sup>87</sup> Appendix 36. Request to reopen the case, undated. Attached to the initial petition.

<sup>88</sup> Appendix 46. Challenge to the report by the Medical Board filed by the plaintiffs, July 17, 1998. Attached to the initial petition.

<sup>89</sup> Appendix 48. Report by the Medical Board on October 21, 1998. Attached to the initial petition.

<sup>90</sup> Appendix 49. Report by Dr. Hugo Ricardo Nandin of October 27, 1998. Attached to the initial petition.

<sup>91</sup> Appendix 50. Remarks and requests for measures by the plaintiffs, November 17, 1998. Attached to the initial petition.



hit or mistreat the "bald guy."<sup>92</sup> The plaintiffs asked that Marcelo Da Luz be summonsed again to make a statement in the presence of the plaintiffs because they had not been notified or summoned to attend the hearing in which said declarant had rendered his testimony.<sup>93</sup> The court ruled that request groundless.<sup>94</sup>

70. Worth underscoring is the statement made by Andrés Alberto Fresco on September 2, 1998, in which he was asked about José Delfín Acosta's condition at the time of the detention and he replied "yes, he struck me as coherent, which is why I said earlier that he was not under the effects of any stimulant." He added that while he was at the police station "Wagner comes out and tells us that the police had received a report of a youth in a black jacket disturbing the peace and that as he had been wearing a black jacket they had arrested him [...] We asked what had happened to them, if they had beaten them to which MARCELO said yes they had, that a policeman had thumped him in the face and in the stomach [...] that they had also beaten the bald guy while they were against the wall [...] the boys told us that they had not reported any of this in their statement because they had taken their statement at the police station. I imagine that the same police officers that had beaten them took that statement [...]."<sup>95</sup>

71. On April 28, 1999, the plaintiffs reiterated their request for evidence to be taken: statements by several witnesses; face-to-face confrontations in court (*careos*); reconstruction of the facts; the sequestering of the x-rays and photographs of the autopsy performed by Dr. Patito, and the formation of another Medical Board.<sup>96</sup> The National Criminal Court of First Instance determined that there were no grounds for admitting the request "[...] as the demands were not considered pertinent or useful in the case of the event investigated."<sup>97</sup>

72. In a decision on August 5, 1999, the National Criminal and Correction Court of First Instance No. 10 ordered the case to be archived, as it found that no crime had been committed and stated that the death of the alleged victim had been due to the effects of alcohol and drugs, combined with self-inflicted injuries.<sup>98</sup> The petitioners filed an appeal against the archiving of the case given that "[...] the evidence brought following the re-opening of the case cast abundant doubt and few certainties as to what really happened [...]."<sup>99</sup> The petitioners also argued that the presence of alcohol and cocaine in the blood of the deceased was not sufficient to argue that the police had not beaten José Delfín Acosta. Nor had the lawfulness of his arrest been determined.<sup>100</sup>

73. On September 17, 1999, the National Criminal and Correctional Court of Appeals issued a one-page resolution confirming the archiving of the case:

The fact is the statement that the facts investigated did not constitute a crime cannot be revised after added information without impairing the benefits established of *ne bus in idem*. [...] In any case, the arguments adduced by the judge of the court of first instance appear to be impeccable and based on a thorough weighing of all the evidence [...].<sup>101</sup>

74. On October 12, 1999, the plaintiffs filled an appeal for annulment of judgment (*recurso de casación*),<sup>102</sup> which was not admitted.<sup>103</sup> They then filed a remedy of complaint against that decision, arguing

<sup>92</sup> Appendix 51. Statement by Wagner Gonçalves Da Luz on Wednesday, December 23, 1998. Attached to the initial petition.

<sup>93</sup> Appendix 53. Writ by the plaintiffs, March 9, 1999. Attached to the initial petition.

<sup>94</sup> Appendix 54. Verdict by the National Criminal Court of First Instance No. 10 on March 25, 1999. Attached to the initial petition.

<sup>95</sup> Appendix 52. Statement by Andrés Alberto Fresco on September 2, 1998. Attached to the initial petition.

<sup>96</sup> Appendix 55. Writ by the plaintiffs, April 28, 1999. Attached to the initial petition.

<sup>97</sup> Appendix 56. Verdict by the National Criminal Court of First Instance No. 10 on May 12, 1999. Attached to the initial petition.

<sup>98</sup> Appendix 57. Tenth National Court of First Instance. Resolution of August 5, 1999. "That, on the day of the facts of the case, in the early hours of April 5, 1996, José Delfín Acosta had ingested large quantities of alcohol and of the drug cocaine, in particular, which had produced a state of mental excitement and aggressiveness, combined with convulsions that led to his death." Attached to the initial petition.

<sup>99</sup> Appendix 58. Appeal filed on August 23, 1999. Attached to the initial petition.

<sup>100</sup> Appendix 58. Appeal filed on August 23, 1999. Attached to the initial petition.

<sup>101</sup> Appendix 59. Resolution of the National Court of Appeals on September 17, 1999. Attached to the initial petition.

<sup>102</sup> Appendix 60. Appeal for annulment of judgment of October 12, 1999. Attached to the initial petition.

that the main reason for the prior appeals had not been to contradict judgment, but because evidence had not been submitted to resolve contradictions between witnesses' testimony<sup>104</sup>; which remedy was denied. The extraordinary appeal<sup>105</sup> was turned down on March 7, 2000.<sup>106</sup> On March 23, 2000, the plaintiffs filed an appeal to the Supreme Court of Justice, arguing that if a party submits evidence belying the statement of a witness, it is the judge's job to refute said evidence.<sup>107</sup> The Court rejected the appeal, finding that there were sufficient grounds to archive the case.<sup>108</sup>

**D. Acts of intimidation and threats against family members and against witness Andrés Alberto Fresco**

75. The Commission notes that in testimony given on April 22, 1996, Ángel Acosta stated that "the place, the home of William Chagas, did not strike him as safe, so he took her [his mother] to the house of some friends [...] That there, there began to be threats over the phone and other silent calls [...] a man's voice left him the following message "tell your son to stop fucking with [us], tell him to stop it."<sup>109</sup> On April 23, 1996, the Tenth National Criminal Court of First Instance sent an official letter to the President of the Criminal and Correctional Court of Appeals of the Federal Capital informing him of the death threats denounced by Ángel Acosta and of the alleged theft of objects from the home of his deceased brother.<sup>110</sup>

76. On April 24, 1996, Ángel Acosta sent a letter to the Uruguayan Consul in Buenos Aires requesting immediate protection and stating that "[...] my mother, Blanca Rosa Martínez, had received repeated threats at the home of another Uruguayan family he trusted. Those threats had terrified that whole family and had forced them to leave the country."<sup>111</sup> The Consulate sent a letter to the Head of the Department of Alien Affairs of the Argentine Federal Police "[...] requesting that it kindly take such measures as it deemed pertinent to provide the necessary security."<sup>112</sup>

77. On April 30, 1996, a statement was taken from Ángel Acosta regarding the threats received. He stated that on April 6, 1996 he had gone to his brother's home [...] and saw that several personal photos were missing and that there were papers and medical analyses on a table [...] and those papers were not supposed to be there, so that he supposed that someone had entered the home [...]. The declarant decided that his mother should live somewhere other than where he lived, for security reasons." He likewise pointed out that:

[...] they called asking for "Mrs. Acosta" [...] Tell Mrs. Acosta's son to stop it...not to go on..." evidently referring to him, the declarant [...] For that reason the declarant had suggested to his mother that she return to Uruguay, for fear that something should happen to her. [...] they continue calling and when I decide to pick up the phone, they don't answer. The declarant

[... continuation]

<sup>103</sup> Appendix 61. Resolution of the National Court of Appeals on Thursday, October 21, 1999. "The challenge brought by the private plaintiff refers in its entirety to the body of evidence in the case, how it was assessed, and the conclusion reached after the examination of said evidence. Such disagreement with the judge's conclusion is insufficient grounds for filing the attempted procedural remedy [...]" Attached to the initial petition.

<sup>104</sup> Appendix 62. Remedy of complaint filed on October 28, 1999. Attached to the initial petition.

<sup>105</sup> Appendix 64. Extraordinary appeal filed by the plaintiffs on February 3, 2000. Attached to the initial petition.

<sup>106</sup> Appendix 65. Statement of inadmissibility of the extraordinary appeal, March 7, 2000. Attached to the initial petition.

<sup>107</sup> Appendix 66. Remedy of complaint to the Supreme Court of Justice, March 23, 2000. Attached to the initial petition.

<sup>108</sup> Appendix 67. Remedy of complaint. Supreme Court of Justice of the Republic, December 18, 2001. "[...] in the files, the plaintiffs fail to demonstrate why the doctrine of arbitrariness should apply to this specific case. The attempt to do so is useless, given that all the complaints raised merely reflect disagreement with the judge's assessment of the evidence contained in the files in the case." Attached to the initial petition.

<sup>109</sup> Appendix 27. Statement by Angel Acosta of April 22, 1996. Attached to the initial petition.

<sup>110</sup> Appendix 68. Unnumbered Official Letter of April 23, 1996, sent by the National Criminal Court of First Instance to the President of the National Criminal and Correctional Court of Appeals of the Federal Capital. Attached to the initial petition.

<sup>111</sup> Appendix 69. Letter from Angel Acosta to Consul Alvaro Barba on April 24, 1996. Attached to the initial petition.

<sup>112</sup> Appendix 44. Uruguayan consulate in Buenos Aires FAX No. 371.8328 of April 29, 1996. Attached to the initial petition.

thinks they are doing it to check his schedule, when the declarant is at home [...] all of it arranged by the Police [...].<sup>113</sup>

78. On September 3, 1998, the presiding judge of the Tenth National Criminal Court of First Instance sent the President of the National Appeals Court certified photocopies of the testimony presented by Andrés Alberto Fresco "in order to advise ["*desinsacular*" -sic] the Correctional Court to intervene in response to the denunciation of threats made by the aforementioned person."<sup>114</sup>

79. The Commission has no information of any investigations being initiated regarding the threats denounced by Ángel Acosta Martínez and by Andrés Alberto Fresco.

#### IV. LEGAL ANALYSIS

##### A. Right to personal liberty and the principle of equal protection (Articles 7<sup>115</sup>, and 24<sup>116</sup> of the American Convention in conjunction with Article 1.1<sup>117</sup> and 2<sup>118</sup> thereof).

###### 1. General considerations

80. Article 7 of the American Convention contains two distinct types of regulations: one general, the other specific. The general one is contained in the first subparagraph: [e]very person has the right to personal liberty and security." As regards the right not to be illegally deprived of liberty, established in Article 7.2 of the Convention, the Inter-American Court has pointed out that that right "recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law."<sup>119</sup> The legal exception required to impair the right to personal liberty pursuant to Article 7(2) of the Convention must necessarily be accompanied by the principle of legal definition of the offense (*tipicidad*), which obliges the States to establish, as specifically as possible and "beforehand," the "reasons" and "conditions" for the deprivation of physical liberty. Accordingly, any requirement established in domestic law that is not complied with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention.<sup>120</sup>

81. The IACHR stresses that improper behavior by police forces constitutes one of the main threats to liberty and the security of individuals.<sup>121</sup> For that reason, States need to adopt measures to ensure that police officers perform their duties in a manner that guarantees human rights and, in particular, that arrests are carried out in accordance with domestic legislation. The Commission reiterates that that does not

<sup>113</sup> Appendix 70. Statement by Angel Acosta Martínez on April 30, 1996. Attached to the initial petition.

<sup>114</sup> Appendix 71. Official Letter of September 3, 1998, sent by the National Criminal Court of First Instance to the President of the National Criminal and Correctional Court of Appeals of the Federal Capital. Attached to the initial petition.

<sup>115</sup> On this, Article 7 of the American Convention states: 1. Every person has the right to personal liberty and security; 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto; 3. No one shall be subject to arbitrary arrest or imprisonment; 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him; (...).

<sup>116</sup> Said Article also states: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

<sup>117</sup> Said Article also states: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

<sup>118</sup> That article establishes: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

<sup>119</sup> I/A Court HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 56. See also: IACHR. Report on Citizen Security and Human Rights. December 31, 2009, paras. 144-146.

<sup>120</sup> I/A Court HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 55. See also: IACHR. Report on Citizen Security and Human Rights. Thursday, December 31, 2009, paras. 144-146.

<sup>121</sup> IACHR, lawsuit before the I/A Court of H/R, Walter David Bulacio, Argentina, January 24, 2001, para. 61.

mean imposing limits on police activities legitimately geared to protecting citizen security as one facet of public welfare in a democratic society.<sup>122</sup>

82. The European Court of Human Rights (hereinafter "the European Court") has stated that when it comes to deprivation of liberty it is especially important to comply with the general principle of legal certainty, which means that the terms and conditions for depriving someone of liberty under domestic law must be clearly defined and the enforcement of the law must in itself be predictable. According to the same Court, the standard of legality of the European Convention requires legislation to be sufficiently precise to enable a person to predict, with a reasonable degree of certainty under the circumstances, the consequences that a specific action may trigger.<sup>123</sup>

83. In connection with Article 7.3 of the American Convention, the Court has established that "no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality."<sup>124</sup> In reference to the arbitrariness of an arrest, the Commission and the Court have established that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.<sup>125</sup> Therefore, any detention must be carried out not only in accordance with domestic legal provisions, but it is also necessary that "domestic law, the applicable procedure, and the corresponding general explicit or tacit principles are, in themselves, compatible with the Convention."<sup>126</sup>

84. Specifically regarding the term "reasonable suspicion," which is expressly provided for in Article 5 of the European Convention on the right to personal liberty, the European Court has pointed out that the words 'reasonable suspicion' "mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence."<sup>127</sup> In this context of arrest based on "reasonable suspicion," the European Court added that "the prosecutor's failure to make a genuine inquiry into the basic facts," in order to verify whether there was a violation of the right to personal liberty" renders it responsible (*compromete su responsabilidad*).<sup>128</sup>

85. That Court also pointed out that there is a clear risk of arbitrariness in the granting of such broad discretion to the police officer and found that there are indeed different impacts on certain groups affected by the exercise of that discretion.<sup>129</sup> In the same vein, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has said that racial and ethnic profiling in law enforcement contravenes international standards because of its discriminatory nature.<sup>130</sup>

<sup>122</sup> IACHR, lawsuit before the I/A Court of H/R, Walter David Bulacio, Argentina, January 24, 2001, para. 62.

<sup>123</sup> ECHR. Case of el Río Prada v. Spain, Judgment of October 21, 2013, para. 125; case of Creangă v. Romania, Judgment of February 23, 2012, para. 120; and Case of Medvedyev et al. v. Romania, Judgment of March 29, 2010, para. 80.

<sup>124</sup> I/A Court HR. *Case of Gangaram Panday v. Suriname*. Judgment of January 21, 1994. Series C No. 16, par. 47; and *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 66.

<sup>125</sup> I/A Court HR. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 92; IACHR. Report 58/12. Case 12.606. Merits. Landaeta Mejias Brothers. Venezuela. par. 218.

<sup>126</sup> I/A Court HR. *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, par. 133.

<sup>127</sup> ECHR. Case of Ilgar Mammadov v. Azerbaijan, Judgment of October 13, 2014, para. 88; case of Erdagöz v. Turkey, Judgment of October 22, 1997, para. 51; and Case of Fox, Campbell and Hartley v. the United Kingdom, Judgment of August 30, 1990, para. 32.

<sup>128</sup> ECHR. Case of Stepuleac v. Moldova, Judgment of February 6, 2008, para. 73.

<sup>129</sup> ECHR. Case of Gillan and Quinton v. the United Kingdom, Judgment of June 28, 2010. para. 85.

<sup>130</sup> Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action, A/HRC/29/46, 20 April 2015, para. 63.

86. The United Nations Working Group on Arbitrary Detention has stated that if the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government.<sup>131</sup> Likewise, the Commission recalls the jurisprudence of the Court regarding the burden of proof when omission by the State is alleged with respect to compliance with certain guarantees contemplated in Article 7 of the Convention: the burden of proof lies with the State because it is making an allegation of a positive nature (susceptible of proof).<sup>132</sup>

87. As for Article 7.4 of the Convention, the Inter-American Court has considered that “the information on the ‘reasons and grounds’ for the detention must be provided ‘when this occurs’ and because the right contained this article entails two obligations: (a) oral or written information on the reasons for the detention, and (b) notification, in writing, of the charges.”<sup>133</sup> The Commission considers that compliance with these guarantees established in the Convention applies to all forms of deprivation of liberty and that Article 7 of the American Convention does not make distinctions in that regard.

88. As noted above, at the time of the facts of this case police edicts were in effect that allowed police officers to detain people based on denunciations or suspicions, without the need to secure a judicial arrest warrant or accredit “in flagranti” circumstances, and without indication that said edicts require informing those detained of the reasons for their detention. The Commission considers that the State did not demonstrate that, in its regulations, police powers to detain were regulated with the defined legal precision (*tipicidad*) required to evaluate whether a detention was legal. Nor is there any indication that said edicts contained safeguards, such as the obligation of police officers to justify on objective grounds the reasons for the detention in connection with the supposed purpose of preventing crime, in such a way as to prevent possible discriminatory uses of those powers, which, as pointed out in the foregoing section, represent one of the main risks posed by broad powers of detention, such as those analyzed in the instant case.

89. In the use made of those powers in this case, the detention of José Delfín Acosta was not carried out on the basis of a written warrant by a competent authority, but based on an alleged anonymous complaint and, according to the State, specifically in accordance with an “edict on drunkenness.” From the statements of persons who witnessed those deeds, as well as of the police officers themselves, José Delfín Acosta was not informed that that was the reason for his detention; what is more, there is nothing in the file to indicate that he was given any reason whatsoever for his detention.

90. The Commission considers that it is irrelevant whether or not an anonymous complaint was received. What matters for determining whether the detention was arbitrary is whether there were objective grounds justifying it with respect to José Delfín Acosta. On this, the Commission considers that the absence of such grounds is evident inasmuch as even after confirming that neither the alleged victim nor Mr. Wagner Da Luz were bearing arms and after ascertaining over the police digital radio system that there was “no restraining order” restricting Mr. Acosta’s freedom of movement, the police decided to take him to police station No. 5, together with the Da Luz brothers. There is not a single official document explaining the reasons why, after carrying out those checks, it was admissible to detain Mr. Acosta for crime prevention purposes. At the same time, if the purpose was to protect his life and bodily integrity given the alleged symptoms of intoxication, the State should have taken him immediately to a health center, not deprive of liberty in the police station.

91. The Commission cannot fail to note that both Mr. Acosta and the Da Luz brothers were foreigners and Afro-descendants, a fact that José Delfín Acosta himself underscored during the police operation. As indicated previously, rules allowing the police to deprive a person of liberty based on

<sup>131</sup> United Nations Working Group on Arbitrary Detention. Opinion No. 58/2016 concerning Paulo Jenaro Díez Gargari (Mexico). A/HRC/WGAD/2016/58, 30 January 2017, para. 19.

<sup>132</sup> I/A Court HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 73.

<sup>133</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, par. 132.



suspicions and for citizen security reasons, if they are not accompanied by proper safeguards to ensure objectivity, end up being used arbitrarily and based on prejudices and stereotypes regarding certain groups who happen to be traditional victims of discrimination, such as persons of African descent. Thus, given the existence of edicts that did not establish said safeguards, the total lack of objective grounds given in this specific case and the circumstances surrounding it, including José Delfín's own assessment of what was happening -- which was not disproved by the State through any diligent investigation -- the Commission determines that his detention was not only illegal but, given the lack of legal definition (*tipicidad*) of the scope of the powers used, also arbitrary and discriminatory.

92. From the above, the Inter-American Commission concludes that the Argentine State is responsible for violating the rights established in Articles 7.1, 7.2, 7.3, 7.4, and 24 of the American Convention in conjunction with the general obligations established in Article 1.1 and 2 of the same instrument, to the detriment of José Delfín Acosta.

## **B. Rights to life and humane treatment (Articles 4.1,<sup>134</sup> 5.1, 5.2<sup>135</sup> and 1(1) of the American Convention)**

### **1. General considerations**

93. The Inter-American Commission and the Inter-American Court have held that the right to life plays a fundamental role as the exercise of all other rights depends on its protection.<sup>136</sup> Given that nature, states have the obligation to ensure the creation of such conditions as may be required for its full enjoyment and exercise.<sup>137</sup> The Court has also pointed out that compliance with Article 4, in conjunction with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily but also that the states take all appropriate measures to protect and preserve the right to life as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.<sup>138</sup> Specifically, that includes the duty of states to adopt such measures as are needed to dissuade any threat to the right to life.<sup>139</sup> The same obligations apply with respect to the right to humane treatment/personal integrity.

94. As regards the right to humane treatment/personal integrity, the Court has pointed out that states have a duty to adopt such measures as are needed to address threats to the physical integrity of persons.<sup>140</sup> The case law of the inter-American system has repeatedly established that vis-a-vis persons deprived of liberty the State assumes a special position as the guarantor of their rights, given that deprivation of liberty produces a special relationship and interaction of subordination between the person deprived of his liberty and the State; typically the State can be rigorous in regulating what the prisoner's rights and obligations are, and determines what the circumstances of the internment will be; the inmate is prevented from satisfying, on his own, certain basic needs that are essential if one is to live with dignity."<sup>141</sup>

<sup>134</sup> Said Article states in this regard: 1. Every person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life.

<sup>135</sup> Said Article states in this regard: 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>136</sup> I/A Court HR. *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, par. 144; *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 166, par. 78.

<sup>137</sup> I/A Court HR. *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala, Merits.* Judgment of November 19, 1999. Series C No. 63, par. 144.

<sup>138</sup> I/A Court HR. *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs.* Judgment of September 4, 2012. Series C No. 196, par. 74.

<sup>139</sup> I/A Court HR. *Case of Gonzales Lluy et al. v. Ecuador.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, par. 169.

<sup>140</sup> I/A Court HR. *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, par. 128.

<sup>141</sup> I/A Court HR. *Case of the "Juvenile Reeducation Institute" v. Paraguay.* Judgment of September 2, 2004, par. 152; *Case of Mendoza v. Argentina.* Judgment of May 14, 2013, par. 188 (see also *Case of Caesar v. Trinidad and Tobago.* Judgment of March 11, 2005, par. 97; *Case of Fermín Ramírez v. Guatemala.* Judgment of June 20, 2005, par. 118). Along those lines, two decades ago the IACHR established that: "When it detains an individual, the State introduces that individual into a "total institution" --such as a prison-- where the various aspects of his life are subject to an established regimen; where the prisoner is removed from his natural and social milieu; where the established

[continues ...]



Under such circumstances, "the way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability."<sup>142</sup>

95. Consequently, the absence of a satisfactory explanation would lead to presumption of the State's responsibility for injuries shown on a person who has been under the custody of State agents.<sup>143</sup> Furthermore, the State's status as guarantor of the right to life and human treatment/personal integrity obliges it to prevent situations that could lead, by act or omission, to impairment of the person in its custody.<sup>144</sup>

96. In the instance case, it is undisputed that Mr. José Delfín Acosta died while in State custody. Nor is it disputed that forensic studies pointed to impairment of the victim's physical integrity prior to his death. The dispute regarding the State's responsibility for those injuries and his death revolves around the petitioners' claim that death was produced by blows struck by police officers, while the State indicates that it was produced by the victim's degree of intoxication and blows inflicted by the victim himself while in that state.

97. Given that disagreement and by the standards cited above, since they occurred while in its custody, the State must be presumed to be responsible for both the injuries and the death. That presumption could only be proved unfounded if the State itself provides a satisfactory explanation. Here, the Commission observes, as will be analyzed below, that the criminal investigations did not throw definitive judicial light on what happened.

98. Moreover, as regards the explanation that Mr. José Delfín Acosta's degree of drunkenness and intoxication at the time of his detention was such as to endanger his life, such an explanation is incompatible with the police officers' decision to take him not to a health center but rather to the police station. Nothing in the file indicates any form of assistance given to Mr. Acosta by those police officers that might lend plausibility to the version offered by the State so as to render the presumption of its responsibility unfounded. Were the hypothesis of death through intoxication to be accepted, then the police officers in Police Station No. 5 should have ordered him taken to the nearest hospital as soon as he arrived at the situation, instead of waiting for his condition to worsen. Those officers declared that Mr. Acosta was so intoxicated that he began to inflict blows on himself and it was necessary to handcuff him to prevent him from doing harm to himself. Thus, even in that hypothesis, the State would have failed in its duty to guarantee the right to life and humane treatment of Mr. Acosta by taking appropriate action.

99. In addition to the State's failure to produce a satisfactory explanation in the terms analyzed, there is also circumstantial evidence pointing to the improbability of the State's version. Thus, it is relevant to point out that none of the people who witnessed the detention talked of having seen Mr. Acosta in such a poor state as that described by the guards. It is striking therefore that from a state in which he "stumbled" or "spoke incoherently", Mr. Acosta went to one of extreme violence. The Commission notes that, at the very least, there were reasonable doubts that were not satisfactorily resolved by internal proceedings about the blows not being self-inflicted, bearing in mind, furthermore, by expert Nandin's observation that the area of the blow "is accessible to third parties" and that the marks left were not consistent with self-inflicted blows.

100. In light of the above, the Commission concludes that the State did not manage to prove unfounded the presumption of the State's responsibility for the death of José Delfín Acosta while he was in its

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[... continuation]

regimen is one of absolute control, a loss of privacy, limitation of living space and, above all, a radical decline in the individual's means of defending himself. All this means that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights." IACHR, Report No. 41/99, Merits, Minors in Detention (Honduras), March 10, 1999, par. 135.

<sup>142</sup> I/A Court HR. *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, par. 126.

<sup>143</sup> *Idem*. (Citing cf. *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Merits, pars. 95 and 170; and *Case of Fleury et al. v. Haiti*, par. 77).

<sup>144</sup> *Ibid.*, par. 191.

custody by means of an explanation that could be deemed satisfactory. What is more, even in the hypothesis adduced by the State, the IACHR considers that its authorities did not lend the immediate assistance that would have been required by a person in the state and level of intoxication described by the State at the time of his detention -- a detention already characterized by the Commission as arbitrary -- nor did the State act in such a way as to safeguard his physical integrity and life while he was in its custody.

101. Consequently, the Commission concludes that the Argentine State violated the rights to life and human treatment/personal liberty recognized at Articles 4.1, 5.1, and 5.2 of the American Convention, in conjunction with the obligations to observe and ensure rights set forth in Article 1(1) of said instrument, to the detriment of José Delfín Acosta Martínez.

**C. Rights to judicial guarantees and judicial protection (Articles 8(1)<sup>145</sup> and 25(1)<sup>146</sup>, and 5 of the American Convention)**

102. In accordance with reiterated jurisprudence of the organs of the inter-American system, “as a result of the protection granted by Articles 8 and 25 of the Convention and the general obligations recognized in its Article 1.1, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”<sup>147</sup> That obligation, which relates to means rather than to results, must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective.<sup>148</sup>

103. States have a duty to investigate violations of human rights recognized in that instrument, such as those alleged in the instant case, and to attempt to restore, to the extent possible, the right that was violated and, where applicable, to repair the damage done by the human rights violations.<sup>149</sup> The Commission emphasizes that Articles 8.1 and 25.1 of the American Convention also established the right of family members of the victims of these violations to be heard throughout domestic proceedings, to learn the truth of what happened, where applicable to see those responsible punished appropriately, and to receive full reparation.

104. Accordingly, investigations carried out by the State must be performed with due diligence, using all available means, and directed toward ascertaining the truth.<sup>150</sup>

105. The Commission notes that the proceedings and investigation focused on the alleged drunkenness and intoxication of Mr. Acosta, not on determining the legality of his detention. The judicial authorities hearing the various appeals also failed to deliver an effective response since they not only continued the State omission of requiring objective grounds for exercising the legal authority to detain people on the basis of an alleged complaint; they also validated as legitimate the grounds cited by the police officers which are, in the Commission's opinion, as indicated above, blatantly insufficient to justify depriving José Delfín Acosta of his liberty.

<sup>145</sup> Article 8.1 of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>146</sup> Article 25.1 of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>147</sup> I/A Court HR. *Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, par. 435.

<sup>148</sup> I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, par. 177.

<sup>149</sup> IACHR, Report 85/13, Case 12.251, Admissibility and Merits, Vereda la Esperanza, Colombia, November 4, 2013, par. 242; and I/A Court H.R., *Case of Kwas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, par. 75; I/A Court H.R. *Case of García-Prieto et al v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 99.

<sup>150</sup> I/A Court HR. *Case of García-Prieto et al v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 101.

106. In addition, the Commission has no information regarding any specific steps take to investigate the degree of criminal and/or administrative liability of the police officers who detained him, who opted to take him to the police station and not to a health care center if he really was suffering the degree of intoxication described by the police officers themselves, and the liability of those present in the police station while Mr. Acosta was detained there in that condition. The Commission considers that a proper investigation and activation of accountability mechanisms for police behavior were essential, moreover, to elucidate whether racism did not play a part in said behavior, as suggested by the circumstances of the detention analyzed above.

107. The Commission further observes that, faced with contradictory versions and serious doubts as to what happened, the State does not appear to have opted for an investigation as a legal duty incumbent upon it to clarify said doubts using all means at its disposal. As the Court has said, in order to clarify contradictory versions surrounding the deprivation of life,<sup>151</sup> due diligence in the investigation must be evaluated in relation to the need to determine the veracity of the versions considered in the context of proceedings regarding what happened.<sup>152</sup> Thus there were no face-to-face confrontations among witnesses with inconsistent or contradictory statements, even though such confrontations were requested by the Mr. Acosta's family. Worth underscoring is the erroneous application made by the National Criminal and Correctional Court of Appeals of the concept of "ne bis in idem", which it used to confirm the archiving of the case and its decision not to re-open the investigation. There was, nevertheless no one singled out, much less absolved, by a final judgment (which is where "ne bis in idem" applies),

108. In light of the above considerations, the Commission concludes that the Argentine State did not provide the family members of José Delfín Acosta Martínez with an appropriate and effective remedy, with which to clarify the legality of his detention and the reasons for his death. It is also to be noted that, despite receiving statements by Messrs. Ángel Acosta and Alberto Fresco in which they denounced threats and acts of intimidation, the State did not provide them with protective measures nor did it conduct any investigation thereof. It was the State's duty, in light of those complaints, to have duly investigated them and to have identified the sources of risk. In addition, proper inquiries into their denunciations and their correct incorporation into the investigation could have thrown light on responsibilities for the death of the victim and on what really happened while he was in State custody.

109. At the same time, the Inter-American Court has indicated on several occasions that the next-of-kin of victims of certain human rights violations may, in turn, become victims.<sup>153</sup> Specifically, the Court found that the right to mental and moral integrity of the next of kin of victims [may be] violated based on the particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.<sup>154</sup>

110. Consequently, the State is responsible for violation of the rights to judicial guarantees and judicial protection recognized in Articles 8.1 and 25.1 of the American Convention, as well as the right to mental and moral integrity established in Article 5.1 of the American Convention, all in conjunction with the obligations referred to in Article 1.1 of the same instrument, to the detriment of the family members of José Delfín Acosta Martínez.

## V. CONCLUSIONS

<sup>151</sup> I/A Court HR. *Case of García Ibarra et al v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 17, 2015. Series C No. 306, par. 143.

<sup>152</sup> I/A Court HR. *Case of García Ibarra et al v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 17, 2015. Series C No. 306, par. 139.

<sup>153</sup> I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Bueno-Alves v. Argentina*. Judgment of May 11, 2007. Series C. No. 164 par. 102.

<sup>154</sup> I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Vargas-Areco*. Judgment of September 26, 2006. Series C No. 155, paras 103 and 96.

111. Based on its determinations of fact and law described above, the Inter-American Commission concludes that the Argentine State is responsible for violating the rights to life, humane treatment, and personal liberty, established in Articles 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5 and 24 of the American Convention, in conjunction with the obligations established in Article 1.1 and 2 of the same instrument, to the detriment of José Delfín Acosta Martínez. The Inter-American Commission likewise concludes that the Argentine State is responsible for violation of the rights to humane treatment, judicial guarantees, and judicial protection recognized in Articles 5.1, 8.1, and 25.1 of the American Convention taken in conjunction with Article 1.1 of that instrument, to the detriment of the family members of José Delfín Acosta Martínez identified in the relevant section of this report.

## **VI. RECOMMENDATIONS**

112. In light of the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF ARGENTINA:**

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions. That reparation should include compensation, as well as reparation for moral prejudice and rehabilitation, for the family members of Mr. José Delfín Acosta Martínez and by agreement with them.
2. Order the necessary steps to conduct exhaustive criminal and disciplinary investigations, diligently and within a reasonable period of time, into all the liabilities derived from the violations described in this report. That investigation should meet the standards described in the instant report.
3. Adopt the measures needed to avoid a repetition of the facts described in the instant case, including: i) ensuring that legislation regulating the authority to detain and search people on the street based on a suspicion that he or she is committing a crime be rooted in objective grounds and include requirements to justify those grounds in each case; ii) training State agents pertaining to the security forces in the standards described in this report regarding their obligations to safeguard the life and integrity of persons in their custody.