Buenos Aires, 11 June 1998

Regarding the proceeding: "Appeal presented by the Defendant in the case *Private Polyclinic of Medicine and Surgery S.A. v. Municipality of the City of Buenos Aires*" for a decision on the merits.

Considering:

1) That the company Private Polyclinic of Medicine and Surgery S.A. brought this special amparo petition against the decision of the Secretary of Health of the Municipality of the then City of Buenos Aires denying the transfer of a minor – admitted to intensive care in one of its clinics – to a public hospital's care in which he and his father were covered by private insurance.

2) That Chamber C of the National Civil Court of Appeals, upon reversing the decision of the lower court, admitted the claim and ordered the defendant, whose approval was necessary, to stop blocking the transfer of the minor to the public hospital, regardless of an immediate transfer order, which would require the request of the parents in view of the ongoing civil trial between the father of the minor and the appellant, which deals with the scope of the assistance plan assumed by it and where the intervening magistrate ordered an innovative precautionary measure that impeded the transfer of the patient until such time as the process is resolved.

3) That the non-prevailing party brought a special petition and claimed that the appealed ruling was arbitrary as, according to the petition, the appealed judgment interferes in an area of decisions exclusive to the Government of the City of Buenos Aires and leaves without effect the cited innovative precautionary measure in violation of the prohibition of art. 2, sec. b, of Law 16.986, which declares inadmissible all amparo actions when the impugned act comes from the Judicial Power.

4) That furthermore the appellant has required the disqualification of the appealed ruling for lack of a statutory basis in the arguments used by the lower court which favor the petitioner's economic interests to the prejudice of the rights of the child, whose transfer has not been requested by his parent who, to the contrary, has indicated his disagreement on the

matter prior to the appealed judgment.

5) That the appellant's grievances concerning the supposed similarity between said precautionary measure and the object of the amparo petition, the judgment's lack of statutory support and the erroneous assessment of the case's evidence, only reflect its disagreements with the criteria of the lower court that were based in fact, common law, and procedural law, not taking into account – as a rule and by its nature – the authority of art. 14, Law 48, especially when arbitrariness in the appealed judgment's completed assessment, in that sense, could not be shown.

6) That, with respect to the other issues, the defendant has not mentioned a concrete law or norm that requires the prepaid medicine services to maintain patients in intensive care for periods longer than those set forth in the adhesion contracts signed by their clients, and thus it is not possible – particularly with a broad interpretation of the spirit of Law 24.754 – to conclude that the provision of intensive care in a public hospital should be denied, as the Secretary of Health ordered the defendant by means of the admission order made by the petitioner.

7) That the federal remedy has not refuted the lower court's argument in the sense that the defendant's opposition to the child's transfer to a no-fee public establishment was excessive, as supported by the provisions of art. 20 of the Constitution of the Autonomous City of Buenos Aires that guarantees the right to comprehensive health and that establishes that public health expenditures are a social investment priority.

8) That, similarly, the appellant has not presented sufficient criticism of the arguments made by the lower court to admit the amparo petition based on art. 26 of the Convention of the Rights of the Child – ratified by Law 23.849 – which requires the states parties of this treaty to recognize the right to social security benefits of all children and to adopt the necessary measures to achieve full realization of that right.

9) That, nevertheless, art. 20, *in fine*, of the Constitution of the Autonomous City of Buenos Aires authorizes compensation for the loaned services to people with private coverage, so that the fact that this protection exists cannot induce the town to stop providing the service,

without prejudice to the hospital administration's right to recover from the respective service, as economic compensation, the expenses resulting from the attention given to the resident, within the limits of the agreement it has made with the patient.

10) That, for these reasons, neither the existence of arbitrariness in the appellate decision, nor the existence of any federal question that justifies the Court's intervention in a matter that refers to subjects normally outside its extraordinary jurisdiction, have been shown.

Therefore, this direct submission is denied. Noting that the appellant has requested -- under the terms of agreement 47/91 issued by this Court – the budgetary entry necessary to fulfill the deposit envisaged by art. 286 of the Federal Code of Civil and Commercial Procedure, it is appropriate to call on the defendant so that once said entry has been assigned, the referred deposit is cashed, with a warning of further action.

Notify the parties and archive the file in the Registry Office.

Signed by: Julio S. Nazareno (by his vote)- Eduardo Moline O'Connor - Carlos S. Fayt - Augusto Cesar Belluscio - Enrique Santiago Petracchi - Antonio Boggiano - Guillermo A. F. Lopez - Gustavo A. Bossert - Adolfo Roberto Vazquez (by his vote).-

OPINION OF MR. PRESIDENT DOCTOR DON JULIO S. NAZARENO

Considering:

That the special petition, whose denial gave rise to the present complaint, is inadmissible (art. 280 of Federal Code of Civil and Commercial Procedure).

Therefore, this direct submission is rejected.

Noting that the appellant has requested – under the terms of agreement 47/91 issued by this Court – the budgetary entry necessary to fulfill the deposit envisaged by art. 286 of the Federal Code of Civil and Commercial Procedure, it is appropriate to call on the defendant so that once said entry has been assigned, the referred deposit is cashed, with a warning of further action.

Notify the parties and archive the file in the Registry Office.

Signed by: Julio S. Nazareno.-

OPINION OF MR. MINISTER DOCTOR DON ADOLFO ROBERTO VAZQUEZ

Considering:

That the undersigned agrees with the vote of the majority, with the exception of consideration 6, which is expressed as follows:

6) That, with respect to the other issues, it should be added, that it does not follow that the defendant can invoke (and it did not), before the hospitalization request formulated by the petitioner, the existence of a concrete law or norm that authorizes the denial of provision of intensive care in a public hospital in an emergency situation like that in the present case.

For this reason, this direct submission is rejected.

Noting that the appellant has requested – under the terms of agreement 47/91 issued by this Court – the budgetary entry necessary to fulfill the deposit envisaged by art. 286 of the Federal Code of Civil and Commercial Procedure, it is appropriate to call on the defendant so that once said entry has been assigned, the referred deposit is cashed, with a warning of further action.

Notify the parties and archive the file in the Registry Office.

Signed: Adolfo Roberto Vazquez