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REPORT No. 103/19
PETITION 1224-07
FRIENDLY SETTLEMENT REPORT

DAVID RABINOVICH
URUGUAY

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I. SUMMARY AND PROCEDURAL ASPECTS RELATED TO THE FRIENDLY SETTLEMENT PROCESS

1. On October 25, 2007, the Inter-American Commission on Human Rights (hereinafter "The Commission" or the "IACHR") received a petition in the name of David Rabinovich with the sponsorship of the Uruguayan Press Association [*Asociación de la Prensa Uruguaya* hereinafter APU for its initials in Spanish] and the Uruguayan Institute of Legal Studies [*Instituto de Estudios Legales del Uruguay*, hereinafter ILESUR for its initials in Spanish], subsequently "the petitioners", in which it was alleged that he was a victim of violations to his freedom of expression and access to information, for the alleged denial of access to information of public interest on the basis of a law incompatible with international standards. According to the allegations, the alleged victim, David Rabinovich, a journalist by profession, had requested access to the minutes, the transcription of recordings or tapes of a session of the Budget Committee of the Departmental Board of San José which was denied. The petitioner alleged that Article 11 of the Municipal Organic Law No. 9.515 of 1935 allowed to declare as secrets the matters resolved in the session, by decision of the absolute majority of those present. The petitioner alleged that the Uruguayan State did not comply with the standards of maximum disclosure, publicity and transparency.

2. The petitioners alleged that the State is responsible for the violation of articles 13 (right to freedom of thought and expression) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention"), all of them in accordance with the general obligation to respect and guarantee the rights and freedoms, provided in Article 1 (1) and Article 2 (Duty to adopt provisions of domestic law) of the same instrument.

3. On October 1, 2015, the parties formally initiated the negotiation of a friendly settlement that materialized with the signing of an agreement on October 25, 2017, within the framework of a working meeting facilitated by Commissioner Francisco José Eguiguren Praeli, Rapporteur of the IACHR for Uruguay during the 165th period of sessions of the IACHR. Through the friendly settlement agreement (hereinafter "FSA" or "agreement"), the Uruguayan State adopted the commitment to facilitate the public dissemination of the agreement reached, with emphasis on the dissemination of the current regulations on access to public information. Likewise, the State acknowledged that the refusal of the Departmental Board of San José to provide access to the public information requested by Mr. Rabinovich, resulted in a limitation to the exercise of his right to seek, receive and disseminate information and ideas of all nature, in a context of non-existence of clear procedures of access to public information prevailing at the time of the events.

4. Subsequently, on May 3, 2019, the parties signed a Minute of Understanding to establish the working route and the content of the obligations of the State derived from the agreement to move towards full compliance.

5. On June 11, 2019, the Uruguayan State submitted information on compliance with the friendly settlement agreement and requested its approval by the IACHR. The petitioners, on the other hand, indicated on June 26, 2019, their satisfaction and compliance with the approval of the FSA.

6. In this friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission's Rules of Procedure, a summary of the facts alleged by the petitioner is made and the friendly settlement agreement, as signed on October 25, 2017 by the petitioner and the representative of the Oriental Republic of Uruguay, is transcribed. Likewise, the agreement signed by the parties is approved, along

with the publication of this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. ALLEGED FACTS

7. As alleged by the petitioner, the Uruguayan State committed violations of the right to freedom of expression and the right of access to information in custody of the State both enshrine in article 13 of the American Convention, first when the Departmental Board of San José did not answer to him, and later denied without a well-founded resolution, a written request from the victim to access the minutes, transcription of the recording or recorded tape, of the sessions of the Budget Commission of the Departmental Board of San José. The petitioners alleged that the State did not comply with the principles of maximum disclosure, publicity and transparency that derive from Article 13 of the Convention.

8. The petitioner contended that the Uruguayan State violated the right to seek and receive information from the journalist Rabinovich because a state agency - in this case at the departmental level - prevented him from accessing information on the management of public accounts based on a law incompatible with international standards, allowing declaring secret any session of the Departmental Board.

9. In its the description of the facts, the petitioner alleged that the State also violated the victim's right of access to information because the registry that requested the information would have been destroyed.

10. The petitioner indicated that the Uruguayan State did not guarantee an adequate administrative and judicial process to obtain a decision regarding its request for access to information in custody of the State. Additionally, it was indicated in the petition that there was no simple, judicial, expedite and effective remedy to guarantee access to public information and that the domestic courts refused to admit a subsequent *writ of Amparo* against the State, thus constituting a violation as well of the right to judicial protection established in article 25.2 of the Convention.

11. The petitioner indicated that the Uruguayan State, in this case its Parliament, had not adopted legislative measures - such as a law on access to public information - or of another nature, aimed at guaranteeing free, prompt and effective access to the information held by the State, allowing by omission the constant violation of this right, as occurred in the specific case.

12. Finally, the petitioner stated that in sum, the Uruguayan State, with regard to the Right of Access to Public Information, was flouting its commitments to respect the rights and freedoms recognized in the Convention and guarantee its free and full exercise to any person subject to its jurisdiction, as well as his obligation to adopt, in accordance with his constitutional procedures and the provisions of the Convention, the legislative or other measures that may be necessary to give effect to such rights and freedoms.

III. FRIENDLY SETTLEMENT

13. On October 25, 2017, in the city of Montevideo, Uruguay, within the framework of a working meeting facilitated by Commissioner Francisco José Eguiguren Praeli, Rapporteur of the IACHR for Uruguay, the parties represented by Ariel Bergamino, Undersecretary of the Ministry of Foreign Affairs, and the petitioner David Rabinovich, signed a friendly settlement agreement whose text establishes the following:

FRIENDLY SETTLEMENT AGREEMENT PETITION 1224 - 07 DAVID RABINOVICH

In Montevideo, Eastern Republic of Uruguay, within the framework of the 165th Period of Sessions of the Inter-American Commission on Human Rights, appears on one hand: the Assistant Secretary of the Ministry of Foreign Affairs, Ariel Bergamino, oriental, of legal age, holder of the Identity Card No. [...], in representation of the Oriental Republic of Uruguay, and on the other hand, Mr. David Rabinovich, oriental, of legal age, holder of the Identity Card No.

[...] assisted by his sponsor, Martin Sbrocca, Identity Card No. [...] of the Institute of Legal and Social Studies of Uruguay (IELSUR), who agree to celebrate this agreement:

BACKGROUND: The journalist David Rabinovich, protected by the right to information, timely requested the Departmental Board of San José access to information on the deliberations among local representatives - ediles - of that departmental legislative body of Uruguay. The Departmental Board of San José, protected by Article 11 of the Municipal Organic Law No. 9.515, denied the journalist access to the minutes, transcription of the recording or recorded tape of the meetings held between January and March 2006 by the Budget Committee of the aforementioned Board.

Subsequently, on June 29, 2006, the journalist filed a *writ of Amparo* - in accordance with Law 16.011 - before the Departmental Law Court of San José of Second Turn. In that instance, the representatives of the Departmental Board of San Jose alleged that the digital records of a session of the Budget Commission of the Departmental Board of San José that had been requested by the journalist had been destroyed due to carelessness.

By sentence No. 177 of November 15, 2006, the Court of First Instance dismissed the *writ of Amparo*, based on the fact that there was no manifest illegitimacy in the decision of the Departmental Board.

After the adverse ruling of the first instance and following the procedure provided for in Article 10 of Law 16,011, an appeal was filed against the judgment referred to the Court of Second Instance Civil Appeals.

The Court of First Instance confirmed the first instance judgment and, therefore, rejected the application for the *writ of Amparo* as an appropriate way to protect the right of access to public information. According to Sentence 43/2007 of March 7, 2007, the Court held that, although the illegitimacy of the decision of the Departmental Board of San José that declared the information requested by the journalist secret was not ruled out, it cannot be argued that the illegitimacy is "manifest," given that there is a legal norm that allows to declare certain matters treated or resolved as secret.

On May 15, 2008, having filed a *writ of Amparo* and subsequent appeal of the ruling of the Court of Appeals, the journalist appeared under Article 13 of the American Convention on Human Rights to deduce his petition before the Inter-American Commission on Human Rights (P.1224-07), alleging that the Oriental Republic of Uruguay had violated the rights enshrined in Article 13 of the American Convention on Human Rights, especially the right of access to public information.

It also denounced that the Oriental Republic of Uruguay had violated the rights to judicial protection enshrined in Article 25 of the American Convention on Human Rights, as well as the general obligations to respect and guarantee the rights and freedoms and to adopt provisions of domestic law established in Articles 1.1 and 2 of the American Convention on Human Rights, to its detriment.

The Uruguayan State, after analyzing the case, presented before the Inter-American Commission its willingness to initiate a dialogue with the petitioner in order to reach an amicable solution.

AGREEMENT

1. The State recognizes that the refusal of the Departmental Board of San José to provide access to public information requested by Mr. Rabinovich translated into a limitation on the exercise of his right to seek, receive, and disseminate information and ideas of all kinds, in a

context of non-existence of clear procedures for access to public information, which led him to promote a petition before the Uruguayan Judicial Branch and later before the IACHR.

2. The State notes, and Mr. David Rabinovich acknowledges, the progress made through the adoption of significant legislative reforms that have resulted in the strengthening of the legal framework that guarantees and gives effect to the right of all persons to seek, receive and impart public information: Law No. 18,220 of 20 December 2007, National Archives System; Law No. 18,232 of 22 December 2007, Community Broadcasting Service; Law No. 18,331 of 11 August 2008, Personal Data Protection and Habeas Data Action; Law No. 18,381 of 17 October 2008, Right of Access to Public Information; Law No. 18,515 of 26 June 2009, reform of the Uruguayan penal system relating to communication crimes; regulations that followed the standards established in the Inter-American Human Rights System, without prejudice to the provisions of the Inter-American Model Law on Access to Public Information (Approved by the Assembly of the Organization of American States in June 2010).

3. The State and the petitioner agree to appear jointly and personally before the Inter-American Commission on Human Rights at its 165th Period of Sessions in Montevideo, in order to sign the present friendly settlement and request the closure of the proceedings and the archive of the petition P. 1224-07 before the Inter-American Commission on Human Rights.

4. The State and the journalist agree to cooperate to facilitate the public dissemination of the agreement reached, with emphasis on the permanent dissemination of existing regulations on access to public information.

For proof of the commitment contracted and in faith of which, they sign the present document in Montevideo on the twenty-fifth day of October 2017.

**MINUTE OF UNDERSTANDING ON COMPLIANCE WITH THE FRIENDLY SOLUTION
AGREEMENT Petition No. 1224-07**

In Montevideo on May 3, 2019, the State of Uruguay represented by Dianela Pi, Director of Human Rights and Humanitarian Law of the Ministry of Foreign Affairs, and Mr. David Rabinovich and Dr. Martín Prats of the Institute of Legal and Social Studies of Uruguay (IELSUR) in their capacity as petitioners, sign the following Minute of Understanding on what the parties understand to be the elements for full compliance with the friendly settlement agreement signed on October 25, 2017.

The parties consider that the friendly settlement agreement subscribed in the reference case will be understood to have been fully complied with when the following actions or activities are carried out:

1. To hold an academic event, open to the public, related to the Petition and the approval of the law of access to public information and other significant norms in the matter.

2. Jointly draw up a list of guests including relevant actors, public bodies and civil society organizations, the press and the media.

3. Ensure the widest dissemination of the event through a press release from the Ministry of Foreign Affairs and a recording of the event, which will be delivered to the petitioners and the Secretariat of the Presidency of the Republic, the National Institution of Human Rights and Ombudsman's Office, the Press Association of Uruguay and the Interior Press Organization, who will be asked to support its dissemination, which will be duly communicated to both the petitioners and the Inter-American Commission on Human Rights.

Once the aforementioned actions are completed, the parties will request the IACHR to homologate the friendly settlement agreement as established in Article 49 of the American Commission on Human Rights.

Without prejudice to the foregoing, the State undertakes to continue advancing in the permanent dissemination of current regulations on access to public information.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

14. The IACHR reiterates that according to Articles 48(1)(f) and 49 of the American Convention, this procedure has the aim of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Agreeing to pursue this procedure expresses the good faith of the State as regards carrying out the purposes and objectives of the Convention in keeping with the principle of *pacta sunt servanda*, by which states should carry out their treaty obligations in good faith.¹ It also reiterates that the friendly settlement procedure provided for in the Convention makes it possible to conclude individual cases in a non-contentious manner, and in cases relating to several countries, has proven to offer an important vehicle for settlement that can be used by both parties.

15. The Inter-American Commission has closely followed the development of the friendly settlement achieved in the instant case and highly values the efforts made by both parties during the negotiation of the agreement to achieve this friendly settlement, which is compatible with the object and purpose of the Convention.

16. The Commission notes that the parties have signed a Minute of Understanding that defines the State's obligations arising from the friendly settlement agreement on 3 May 2019, and therefore declares that it forms an integral part of the agreement between the parties.

17. The IACHR notes that given the information provided by the parties so far and the request for homologation of the FSA submitted by the parties to the Commission, it is necessary to assess compliance with the commitments established in the amicable settlement agreement.

18. The Inter-American Commission values the first declaratory clause, which recognizes the international responsibility of the Uruguayan State for the violation of the rights to freedom of thought and expression and to judicial protection to the detriment of Mr. David Rabinovich.

19. With regard to the second and third clauses of the agreement, the Commission considers that these are declaratory clauses and it therefore it does not up to the Commission to monitor their implementation.

20. Regarding to the fourth clause of the friendly settlement agreement on the commitment of the parties to “cooperate in order to facilitate the public dissemination of the agreement reached, with emphasis on the permanent dissemination of the existing rules on access to public information”, the Commission notes that it constituted a broad obligation that had to be delimited by the parties in order to facilitate the implementation of the measure, for which reason the parties jointly decided to give content to it through the Minute of Understanding dated May 3, 2019.

21. According to the information provided by the parties, on May 27, 2019, the State held the event “Seminar on the Impacts of the Friendly Settlement Procedure before the IACHR on the National Legislative Development of Uruguay,” in the city of Montevideo. The Seminar was attended by Felipe Michelini, Coordinator of the UNESCO Chair of the University of the Republic of Uruguay; Commissioner Esmeralda Arosemena de Troitiño, in her capacity as President of the IACHR; and Commissioner Antonia Urrejola, in her capacity as Country Rapporteur; David Rabinovich and Martin Prats, in their capacity as petitioners; Juan

¹ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: **Pacta sunt servanda**. “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

Faroppa, Representative of the National Human Rights Institution and Ombudsman's Office; and Minister Daniela Pi, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs. For the organization of this event, the parties exchanged comments on the content of the agenda and the list of guests with the facilitation of the Section for Friendly Solutions and Follow-up of the IACHR.

22. On this respect, the petitioners indicated their satisfaction with the fulfillment of the commitments derived from the friendly settlement agreement and the Minute of Understanding. Therefore, the Commission considers that points 1 and 2 of the Minute of Understanding of May 3, 2019 are fully complied with and declares so.

23. In this regard, it should be noted that the Commission appreciated at the time the efforts of the Uruguayan State, the collaboration and support of the Directorate of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs in the organization and execution of this seminar and in the activities to implement the friendly settlement agreement in the above-mentioned request. At the same time, the Commission urged the Uruguayan State to complete the implementation of the agreed working route for full compliance with the friendly settlement agreement².

24. Subsequently, the State also provided a record of press release No. 65/19 published by the Ministry of Foreign Affairs, which detailed the content of the academic event and included a link to the audiovisual record of the event which, at the time of publication of this report, is available to the public³.

25. On the other hand, on June 11, 2019, the State sent copies of the letters sent to the Secretariat of the Presidency of the Republic, the National Institution of Human Rights and Ombudsman's Office, the Press Association of Uruguay and the Organization of the Interior Press, in which they were given details of the friendly settlement agreement, of the event held in compliance with the Minute of Understanding of May 3, 2019, they were provided with the link to the audiovisual record of the national seminar and were asked for their support in publicizing the event. Finally, the petitioners were provided with the same link for their knowledge and dissemination.

26. On this respect, the petitioners indicated their satisfaction with the fulfillment of the commitments derived from the friendly settlement agreement and the Minute of Understanding. On June 26, 2019, in view of the foregoing, the Commission considers that item 3 of the Minute of Understanding of 3 May 2019 is fully complied with and declares so.

27. In the light of the foregoing, and taking into account the elements of information described above, the Commission considers that point 4 of the friendly settlement agreement and points 1, 2 and 3 of the Minute of Understanding between the parties, that gave content to the execution clause of the agreement, are fully complied with and declares them so. On the other hand, the Commission considers that points 1 and 2 are declaratory and relate to the methodology agreed by the parties and therefore it is not for the Commission to pronounce on them. Therefore, the IACHR declares that the friendly settlement agreement is fully complied with.

IV. CONCLUSIONS

1. Based on the foregoing considerations, and pursuant to the procedure set out in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction that a friendly settlement was reached in the instant case, based on respect for human rights and compatible with the object and purpose of the American Convention.

² See IACHR, Press Release 148/19 "IACHR salutes Uruguay's progress in complying with the friendly settlement agreement signed in petition 1227-07 David Rabinovich," published June 12, 2019. Available electronically at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/148.asp>

³ See, YouTube, Audiovisuales Prensa, Cancillería de Uruguay, "Seminario: Impactos del Procedimiento de Solución Amistosa ante la CIDH en el desarrollo normativo nacional de Uruguay - 27 de mayo 2019". Published on May 31, 2019. Available electronically at: https://www.youtube.com/watch?v=i5IjCZ_0tVw&t=13s=i5IjCZ_0tVw&t=13s (Last consulted on 7 July 2019).

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2. In light of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on October 25, 2017.
2. To declare points 4 of the friendly settlement agreement and points 1, 2 and 3 of the Minute of Understanding of 3 May 2019 fulfilled, in accordance with the analysis contained in this report.
3. To declare that the friendly settlement agreement has been fully complied.
4. To make this report public and to include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 16 day of July 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice-President; Antonia Urrejola; Second Vice-President; Francisco José Eguiguren, Margarete May Macaulay, Luis Ernesto Vargas Silva and Flávia Piovesan, Members of the Commission.