

OAS/Ser.L/V/II
Doc. 239
22 October 2023
Original: Spanish

REPORT No. 220/23
CASE 13.020
REPORT ON FRIENDLY SETTLEMENT

CARLOS ANDRES FRATICELLI
ARGENTINA

Approved electronically by the Commission on October 22, 2023.

Cite as: IACHR, Report No. 220/23, Case 13.020. Friendly Settlement. Carlos Andrés Fraticelli.
Argentina. October 22, 2023.

REPORT No. 220/23
CASE 13.020
FRIENDLY SETTLEMENT
CARLOS ANDRES FRATICELLI
ARGENTINA
OCTOBER 22, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On June 3, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Carlos E. Edwards and Aurelio Cuello Murúa (hereinafter "the petitioners") alleging the international responsibility of the Argentine Republic (hereinafter "State" or "Argentine State" or "Argentina"), for violation of the human rights contemplated in Articles 8 (fair trial) and 25 (judicial protection) in connection with Articles 1. 1 (obligation to respect the rights and guarantees contained in the convention) and 2 (duty to adopt provisions of domestic law) of the American Convention on Human Rights (hereinafter "the American Convention", "ACHR" or the "Convention"), for the violation of the judicial guarantees of Carlos Andrés Fraticelli (hereinafter "the alleged victim"), both in the proceedings instituted against him for the death of his daughter, and in the trial for his removal from his position as a judge.

2. On April 14, 2016, the Commission issued Admissibility Report No. 10/16, in which it declared the petition admissible as well as its competence to hear the claim presented by the petitioners with respect to the alleged violation of the rights enshrined in Articles 7 (personal liberty), 8 (fair trial), 23 (right to participate in government), 24 (equality before the law) and 25 (judicial protection) of the American Convention in connection with the obligation established in Articles 1.1 and 2 thereof.

3. On June 7, 2011, the State expressed its willingness to move forward with a friendly settlement, which was accepted by the Petitioner on July 5, 2011. On December 4, 2012, the Petitioner sent its requests to reach an eventual friendly settlement agreement (hereinafter "FSA"), which were rejected by the State on July 20, 2015.

4. On May 28, 2016, the petitioner reported that negotiations with the Argentine State had been reactivated and that regular meetings were being held with the new State Prosecutor of the Province of Santa Fe to materialize a friendly settlement agreement.

5. According to the parties' submissions, on August 20, 2016, Decree No. 2233/2016 was reportedly published, which approved the agreement between the petitioner and the Province of Santa Fe. Subsequently, on September 7, 2016, the parties entered into a provincial agreement under file number 00115-0006560-4 of the Ministry of Government and State Reform of the Province of Santa Fe.

6. On March 5, 2021, the Argentine State sent an agreement signed with the petitioner and the Province of Santa Fe. Consequently, and in light of the substantial progress in the present case required by Resolution 3/20 on differentiated actions to address the procedural backlog in the friendly settlement procedure, said friendly settlement procedure was reopened on April 6, 2021.¹ In this context, the Commission asked the State to report on the progress made in signing the FSA with the national government.

7. On September 13, 2023, the State reported on the signing of the friendly settlement agreement with the petitioner and the national State, indicating that the agreed reparation measures had been fully complied with. Therefore, the parties requested the Commission to homologate the FSA signed on August 29, 2023.

¹ In this regard see, IACHR, Resolution 3/20 on differentiated actions to address the procedural backlog in friendly settlement procedures, adopted on April 21, 2020.

8. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, contains a summary of the facts alleged by the petitioner and a transcript of the friendly settlement agreement signed on August 29, 2023, by the petitioners and the Argentine State. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

9. The petitioners argued that Mr. Carlos Andrés Fraticelli and his former wife, María Graciela Diesser, were unjustly declared liable for the death of their daughter Natalia Fraticelli, 15 years of age, in the province of Santa Fe; she was found deceased in her room on May 20, 2000. According to the petitioners, since the beginning of the investigations the analysis of the case was characterized both by the influence of public opinion and by the pre-judging of the matter by the judges in charge.

10. The petitioners adduced that while the police initiated an investigation on their own initiative into the death of Natalia Fraticelli, given the absence of violence at the entry to the house and knowledge of problems between the husband and wife, they indicated without any evidence whatsoever that her parents may have borne some responsibility for her death. In addition, they stated that due to the position of Mr. Fraticelli, at the time a judge in the city of Rufino, Santa Fe, the case was publicly portrayed in the media.

11. As regards the impartiality of the judges, the petitioners indicated that judge Carlos Risso of the city of Melincué, province of Santa Fe, in charge of the investigative phase of the case, made several statements to the daily newspaper "La Capital" from May 26 to May 30, 2000, in which he indicated that Mr. Fraticelli and Ms. Diesser were responsible for the death of their daughter. They indicated that at that time the investigation had not yet concluded; Ms. Diesser's procedural situation had not been resolved; and Mr. Fraticelli had not even been tried, as he enjoyed immunity in his capacity as a judicial officer. They argued that given these facts, both Mr. Fraticelli and Ms. Diesser filed several motions of recusal, which were dismissed.

12. According to the petitioners, the judges of the Court of Criminal Appeals of the city of Venado Tuerto had prejudged the matter, as they went to the home of Mr. Fraticelli the day Natalia died because of the close working relationship they had with him. They indicated that the president of that collegial body, Judge Burrone de Juri, in an interview with the television program "Hora clave" on July 6, 2000, directly blamed Ms. Diesser, and indirectly blamed Mr. Fraticelli. Given that at that moment Mr. Fraticelli was facing a proceeding to remove him from office, and therefore was not a party to the trial, they filed several motions of recusal before the Court of Criminal Appeals of the city of Venado Tuerto and before the Supreme Court of Santa Fe, which were dismissed.

13. The petitioners considered that the prejudging was evident, since once it was ordered that Mr. Carlos Fraticelli be removed from his position on November 24, 2000, Judge Risso ordered his detention and prosecution; he was convicted at trial on May 14, 2002, and sentenced to life in prison, legal fees, and costs. That judgment was confirmed by Judge Burrone de Juri on appeal on July 30, 2003, even though up until that time the motions of recusal filed by both Mr. Fraticelli and Ms. Diesser had not been resolved nor was there a conclusive diagnosis of the causes of Natalia Fraticelli's death.

14. Specifically, they adduced the existence of contradictions among the autopsy reports done on Natalia Fraticelli. They indicated that while the forensic physician ruled that the cause of death was mechanical strangulation, the reports by the Chief of Criminalistic Medicine of the Second Regional Unit and by the professor of neurosurgery of the School of Medicine at the Universidad Nacional del Rosario indicated that the cause was not strangulation. In addition, the petitioners indicated that the State dismissed several items of evidence, such as the high dosages of medicines that were not part of the treatment for Natalia's epilepsy, the testimony of Ms. María del Carmen Tenaglia, as well as the performance of a new autopsy, all of which could have pointed to a possible suicide.

15. In response to the denial of the appeal, the petitioners filed a constitutional motion on July 29, 2003, which was rejected on October 27, 2003, by the Court of Appeals. Subsequently, they filed a complaint

appeal (*recurso de queja*) before the Supreme Court of Justice of the Province of Santa Fe, and when it was rejected, a federal special appeal on April 16, 2004, before the same court, which was also rejected. Finally, they filed a complaint appeal before the Supreme Court of Justice of the Nation on February 8, 2005.

16. On August 8, 2006, the Supreme Court of Justice of the Nation ruled the complaint appeal admissible and found that the special appeal was in order. The judgment appealed was overturned and the proceedings went back to the Court of Criminal Appeals of Venado Tuerto so as to hand down a new pronouncement. Nonetheless, according to the petitioners, the Supreme Court of Justice of the Nation ruled only on formal aspects related to the constitution of the court that upheld the convictions of Mr. Fraticelli and Ms. Diesser and did not rule on the alleged prejudging of the matter, the refusal to admit evidence, or the criminal liability of the alleged victim, accused of an offense by nonfeasance.

17. As regards the right to liberty of the alleged victim, the petitioners adduced that he was held in pretrial detention for five years and nine months, which is in excess of the time of three years and six months established as the maximum by law. Mr. Fraticelli requested his provisional release on August 15, 2006, request that was denied on August 20, 2006, by the judge in charge of enforcement of judgments in the locality of Melincué, the same judge who handed down the guilty verdict at trial, with the argument that there was dangerousness; accordingly, they appealed the decision the same day.

18. On November 20, 2009, the Court of Appeals for Criminal Matters in Venado Tuerto ordered that the appeal be admitted and ruled on the merits, declaring the acquittal of Ms. Diesser and Mr. Fraticelli for the crime of homicide. In addition, the petitioners mentioned that during his deprivation of liberty Mr. Fraticelli was not treated in keeping with the principle of humane treatment, but they did not produce specific information on this point.

19. The petitioners alleged that the media and political influence continued through the proceeding since, after the acquittal, the General Prosecutor of the Court (Procurador General de la Corte) of the province Santa Fe, Agustín Basso, issued several negative statements on that pronouncement and instructed the prosecutor to appeal the decision of acquittal. In this regard, the prosecutor of the Court of Criminal Appeals of Venado Tuerto filed a constitutional motion on December 4, 2009 before the Court of Criminal Appeals of Venado Tuerto, which was rejected. In response to that rejection, the prosecutor filed a complaint appeal before the Supreme Court of Justice of the Nation. According to available public information, the motion was rejected in December 2014,² and on February 18, 2016, the Supreme Court of Justice of the Nation rejected the motion for review to challenge that denial, thus upholding the acquittal of Ms. Diesser and Mr. Fraticelli.³

20. The petitioners alleged that, as a result of the judicial process for the death of his daughter, Mr. Fraticelli was arbitrarily removed from his position as magistrate, through a process in which his judicial guarantees and judicial protection were violated.

III. FRIENDLY SETTLEMENT

21. On August 29, 2023, the parties signed a friendly settlement agreement. Below is the text of the friendly settlement agreement submitted to the IACHR:

FRIENDLY SETTLEMENT AGREEMENT CASE 13.020- CARLOS ANDRÉS FRATICELLI

In the Autonomous City of Buenos Aires, Republic of Argentina, on the 29th day of August 2023, the parties in Case No. 13.020 "CARLOS ANDRES FRATICELLI vs. ARGENTINE REPUBLIC" of the registry of the Inter-American Commission on Human Rights, represented in this act by

² Information available at: <http://www.lanacion.com.ar/1872151-caso-fraticelli-la-corte-dejo-firme-la-absolucion-al-ex-juezy-su-esposa>

³ Information available at: <http://www.lanacion.com.ar/1872151-caso-fraticelli-la-corte-dejo-firme-la-absolucion-al-ex-juezy-su-esposa>

Dr. Carlos Edwards, counsel and representative of Mr. Carlos Andrés Fraticelli, for the petitioning party, Dr. Gabriela Laura KLETZEL - National Director of International Human Rights Legal Affairs of the National Secretariat of Human Rights, and Dr. A. Javier SALGADO - Director of Contentious International Human Rights Matters of the Ministry of Foreign Affairs, International Trade and Worship, for the ARGENTINE STATE, in its capacity as party to the American Convention on Human Rights, acting under the express mandate of Article 99, paragraph 11 of the Argentine Constitution, agree to enter into this FRIENDLY SETTLEMENT AGREEMENT.

I. The friendly settlement process between the petitioner and the Government of the Province of Santa Fe.

A. As duly communicated to the Illustrious Inter-American Commission on Human Rights, the petitioning party and the provincial authorities opened a space for dialogue aimed at exploring a friendly solution to the matter.

B. In that scope, the Province of Santa Fe and the petitioning party reached a definitive understanding based on the provisions of Decree No. 2133 of August 20, 2016. In this regard, the aforementioned province and the petitioning party signed an agreement dated September 7, 2016 within the context of FILE NUMBER: 00115-0006560-4 of the Ministry of Government and State Reform of the Province of Santa Fe.

C. In said document, all current and/or future conflicts are deemed to be resolved, through the total and absolute waiver of any current and/or future claim, national or international, administrative or judicial, arising from its exercise in the provincial sphere, in accordance with the petitioner's own wishes, especially with respect to Case No. 13,020 of the Inter-American Commission on Human Rights (fs. 125 to 126). A copy of the document in question, which shows the commitments assumed by the parties, is attached as an annex, for the information of the illustrious Commission.

Said circumstance, and in accordance with current practice, enables the execution of this friendly settlement agreement between the petitioner party and the Argentine State, as parties to the international case, as follows.

II. Friendly settlement Agreement

A. The petitioner states that the measures agreed upon with the Government of the Province of Santa Fe have been fully complied with and, consequently, it is appropriate to sign the final agreement between the petitioners and the Argentine State.

B. Likewise, the Petitioner declares to definitely and irrevocably waive any other claim of any nature with the Argentine State in relation to the present case.

III. Petition

A. The Government of the ARGENTINE REPUBLIC and the petitioning party welcome the signing of this agreement and mutually appreciate the goodwill shown in the negotiation process.

B. Accordingly, the parties expressly request the Inter-American Commission on Human Rights to ratify this Friendly Settlement Agreement by adopting the Report provided for in Article 49 of the American Convention on Human Rights.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

22. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the American Convention, the purpose of this procedure is to “reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention.” The acceptance to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith.⁴ It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

23. The Inter-American Commission on Human Rights has closely followed the development of the friendly settlement reached in the present case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

24. The IACHR observes that, pursuant to Clause III of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article 49 of the American Convention, once the friendly settlement agreement has been signed. Therefore, it is appropriate to assess the content and compliance with the friendly settlement agreement.

25. With regard to the first clause of the agreement, the parties referred to the commitments assumed by the provincial State through the agreement signed on September 7, 2016, and in which the following measures were pacte:

- a) the granting of the ordinary retirement to Mr. Carlos Andrés Fraticelli considering the requirements of the law applicable as of November 8, 2014;
- b) the determination of the base retirement benefit with 72% with 120 months in the tertiary teaching position and 60 simultaneous months in the position of District First Instance Judge;
- c) to establish March 1, 2016 as the date of payment of the retirement benefit.
- d) the personal contributions in the position of judge for the period corresponding to June 2010 to July 2015 which correspond to the amount of \$937,385.00 (nine hundred and thirty seven thousand three hundred and eighty five thousand Argentine pesos) shall be paid by the alleged victim and shall become effective with a 10% monthly discount of his retirement benefit until its total cancellation.

26. On this point, the parties held in the same text of the FSA that the agreed measures have been fully complied with. Therefore, taking into consideration the satisfaction of the parties in the FSA and the indication of the total compliance of the agreed measures, the Commission proceeds to the homologation of the agreement, considering that the commitments undertaken in said agreement have been fully complied with, and it so declares.

27. By virtue of the foregoing, the Commission concludes that the commitment established in the first clause of the agreement is fully complied with and it so declares. On the other hand, the Commission considers that the rest of the content of the agreement is of a declarative nature and therefore it is not applicable to supervise it. In this sense, the Commission concludes that the friendly settlement agreement has a level of full compliance and it so declares. Finally, in view of the information described above, the Commission decides to close the case.

⁴ 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.*

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement has been arrived at in the present case on the basis of respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on August 29, 2023.
2. To declare full compliance with the first clause of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare that the friendly settlement agreement has reached a level of full implementation, according to the analysis contained in this report.
4. To cease supervision of the agreement reached and to close the case.
5. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 22nd day of the month of October, 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, Stuardo Ralón Orellana, Carlos Bernal Pulido and José Luis Caballero Ochoa, Commissioners.