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CASE 13.804

REPORT ON FRIENDLY SETTLEMENT

CARLOS FERNANDO BALLIVIAN JIMENEZ
ARGENTINA

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FRIENDLY SETTLEMENT
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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On December 14, 2010, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Carlos Fernando Antonio Ballivian Jiménez (hereinafter "alleged victim"), with the legal representation of Elena Carmen Moreno and Myriam Carsen (hereinafter "the petitioners" or "the petitioning party"), alleging the international responsibility of the Republic of Argentina (hereinafter "State" or "Argentine State" or "Argentina"), for the violation of the human rights contemplated in Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection), in connection with Article 1 (obligation to respect) of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention"), to the detriment of the alleged victim derived from the violations of due process and the rejection of his request for economic reparation, as a result of his forced exile, filed within the scope of Law No. 24,043.

2. On July 3, 2019, the Commission issued Admissibility Report No. 116/19, in which it declared the petition admissible and its competence to hear the claim filed by the petitioners regarding the alleged violation of the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention in conjunction with Article 1.1 (obligation to respect) of the same instrument.

3. On March 15, 2022, the parties initiated a friendly settlement process with the facilitation of the Commission, which resulted in the signing of a friendly settlement agreement (hereinafter "FSA") on July 5, 2022. On June 28, 2023, the State reported the issuance of Decree No. 323/2023 of June 23, 2023 of the National Executive Branch approving the friendly settlement agreement and, in turn, requested the corresponding approval from the Commission, as established in the FSA. On August 25, 2023, the petitioners requested the corresponding approval from the Commission.

4. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the facts alleged by the petitioners and a transcription of the friendly settlement agreement signed on July 5, 2022, by the petitioners and representatives of 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

5. The petitioners argued that the alleged victim filed an application for the granting of benefits set by the provisions of Law No. 24,043 before the Ministry of Justice and Human Rights due to his forced exile, which was dismissed by Resolution No. 3671/08 of December 3, 2008. The petitioners stated that the Human Rights Secretariat acknowledged that the alleged victim was forced into exile abroad but considered, in accordance with the Nation's Procurator General's opinion No. 146-06, that the provisions of Law 24,043 did not cover compensation for exile not preceded by a deprivation of liberty. Thus, the petitioners claimed that the Ministry of Justice and Human Rights by attending to the ruling of the Procurator General, ignored the numerous compensation cases granted under the same circumstances.

6. The petitioners stated that the alleged victim filed an appeal before the National Court of Appeals in Contentious Administrative Matters in order to contest the arbitrary decision of the Secretariat and to obtain a ruling on the scope of Law 24,043 regarding cases of forced exile. The petitioners pointed out that the Chamber IV of the Court upheld the rejection of the claim on August 6, 2009, on the grounds that the alleged victim's departure from the country should be considered as voluntary self-exile.

7. They added that an extraordinary federal appeal was filed against this decision before the Supreme Court of Justice alleging the unconstitutionality and arbitrariness of the decision, as well as the disregard for international provisions governing economic reparation, and a breach of the legal principle of equality before the law since reparation had been paid in similar situations, including in the case of the alleged victim's spouse, who was in the same situation and produced the same evidence. Although the Supreme Court issued a decision on February 9, 2010, granting the extraordinary appeal, the Court on June 1st decided that it was inadmissible on the ground that the appeal failed to meet the requirement relating to the number of lines per page required in Article 1 of Regulation 4/2007. The decision was served on the petitioners on June 16, 2010. They indicated that upon learning of the remedy's denial in other similar cases, due to the same reasons, they filed the same extraordinary federal appeal with a 26 line per page layout, without modifying its content or exceeding the required extension. However, the court ordered its return and then refused to deal with the complaint.

III. FRIENDLY SETTLEMENT

8. On July 5, 2022, the parties signed a friendly settlement agreement, which states the following:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case n° 13.804 of the registry of the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Lucía Elvira Ballivian Belloni, daughter of Carlos Fernando Antonio Ballivian Giménez,¹ now deceased, Elena Carmen Moreno and Myriam Carsen, in their capacity as attorney and sponsoring legal counsel, respectively; and the Argentine Republic, as a State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting under the express mandate of Article 99, paragraph 11 of the National Constitution, represented by the Undersecretary for International Human Rights Protection and Liaison and the National Director of International Human Rights Legal Affairs of the National Human Rights Secretariat, Dr. Andrea Pochak and Gabriela Kletzel, respectively; and the Director of International Human Rights Litigation of the Ministry of Foreign Affairs, International Trade and Worship of the Nation, Dr. A. Javier Salgado, have the honor to inform the Honorable Commission that they have reached a friendly settlement agreement in the case, the contents of which are set forth below.

I. Background

On December 14, 2010, Carlos Fernando Antonio Ballivian Giménez filed a petition before the Inter-American Commission for violation of Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention in conjunction with Article 1.1 of the same instrument.

In their complaint, the petitioner holds that Mr. Ballivian Giménez and his family were victims of persecution and threats as a result of their political militancy, and in order to safeguard their life and liberty, they were forced into exile in Spain.

Due to these circumstances, Mr. Ballivian Giménez filed an application for the granting of the benefit ruled by Law No. 24,043 before the Ministry of Justice and Human Rights, which was rejected. His claim was also rejected in court.

On January 9, 2017, the IACHR referred the petition to the Argentine State.

¹ The Commission notes and places on record that the original petition refers to Antonio Ballivian Jimenez, and that the parties have used Jimenez or Gimenez interchangeably in the ASA and in the aforementioned Executive Decree.

On July 3, 2019, the Commission approved Admissibility Report No. 116/19. Therein, it declared the admissibility of the complaint with respect to Articles 8 and 25 of the American Convention, in conjunction with Article 1.1 of the same instrument.

On August 6, 2020, the Minister of Justice and Human Rights of the Nation instructed the areas involved in the processing of applications for the benefit provided for in Law No. 24.043 to apply the new doctrine set forth by the Office of the Attorney General of the Treasury of the Nation in Resolution No. IF-2020-36200344-APN-PTN. Consequently, the National Directorate of International Legal Affairs in Human Rights Matters of the National Secretariat of Human Rights consulted the Directorate of Management of Reparation Policies to determine whether the criteria currently in effect would allow for the petitioner's claim to be recognized as a situation of exile.

Following its affirmative response, a process of dialogue was initiated with the petitioner, in which the request for reparation was limited to the expeditious granting of the benefit duly requested, without any other claim for reparation of an economic nature, or of any other type.

The State considers that Mr. Carlos Fernando Antonio Ballivian Giménez was a victim of political persecution by the civil-military dictatorship that besieged the Argentine Republic between March 24, 1976 and December 10, 1983. Bearing this in mind, in line with IF-2022-60071476-APN-DNAJIMDDHH#MJ of the National Secretariat for Human Rights and in compliance with its international human rights obligations, the Argentine State considers that the petitioner has the right to be adequately compensated for the violations he suffered.

II. Measures to be adopted

1. The parties agree that pecuniary reparation will be granted in accordance with the framework provided by Law No. 24.043, considering for this purpose the entire length of time during which Mr. Carlos Fernando Antonio Ballivian Giménez remained in forced exile, according to ruling IF-2022-60071476-APN-DNAJIMDDHH#MJ. That is, from July 19, 1979 to October 28, 1983.
2. In view of the fact that the representatives have accredited before the IACHR that Mr. Carlos Fernando Antonio Ballivian Giménez in the case is deceased, the reparation provided for in the preceding paragraph of this agreement shall be received by whoever reliably accredits their status as successor/s of the deceased, through the corresponding declaration of heirs issued by the competent judicial authority, and in accordance with the procedural rules applicable in the jurisdiction where the succession proceeding has been processed.
3. The Argentine State undertakes that, within three (3) months as from the publication of the Decree of the National Executive Branch in the Official Gazette of the Argentine Republic approving this agreement, it will issue a ministerial resolution granting the reparation benefit established by Law No. 24.043, without additional costs or expenses. The amount of the reparation will be calculated as of the date of the issuance of the aforementioned ministerial resolution.
4. The State undertakes to comply with the term established by Article 30 of the rules of Chapter V of Law No. 25.344, as set forth in Executive Decree No. 1116/2000.
5. Upon payment of the reparation established in section II.2 of this agreement, the petitioner waives, definitively and irrevocably, any other pecuniary claim against the State in relation to the facts which motivated the present case.

III. *Ad referendum* signing

The parties state that this agreement shall be approved by a Decree of the National Executive Branch.

The Government of the Argentine Republic and the petitioning party welcome the signing of this agreement, express their full conformity with its content and scope, mutually appreciate the goodwill shown, and agree that, once the decree of the National Executive Branch is published in the Official Gazette of the Argentine Republic, the Inter-American Commission on Human Rights will be requested, through the Ministry of Foreign Affairs, International Trade and Worship, to adopt the report referred to in Article 49 of the American Convention on Human Rights, at which time the agreement will acquire full legal force and effect.

Three copies of the same tenor are signed in the Autonomous City of Buenos Aires, on the 5th day of the month of July, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. 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.² 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.

10. The Inter-American Commission has closely followed the development of the friendly settlement reached in this 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.

11. In accordance with clause III of the agreement, and in view of the State's confirmation of June 28, 2023, regarding the issuance of Decree No. 323/2023 of the National Executive Branch approving the FSA, as well as the petitioner's request of August 25, 2023, to move forward with its approval, it is appropriate at this time to assess compliance with the commitments established herein.

12. With regard to clause II.2, on the payment of reparations to the successors of the deceased, the Commission notes that on March 11, 2022, the petitioners informed the IACHR of the death of the alleged victim and notified the desire of his family to continue with the processing of the instant case. Likewise, on September 7, 2022, they forwarded the declaration of heirs issued on August 24, 2022, in the corresponding file before the National Court of First Instance in Civil Matters No. 58. The aforementioned in order to notify the State of the number of beneficiaries of the FSA. Said information was brought to the attention of the State. Therefore, the Commission considers, and hereby declares, that this end of the FSA has a level of partial compliance. In this regard, the Commission awaits information on the issuance of the corresponding ministerial resolution and disbursement of the corresponding payment, in order to be able to assess total compliance with this end of the FSA.

13. On the other hand, with regard to clauses II.1 (payment of pecuniary reparation), II.3 (issuance of the resolution granting the reparation benefit provided for in Law No. 24.043) and II.4 (term) of the friendly settlement agreement, the Commission considers that they are pending compliance and so declares

² 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.*

it. Consequently, the Commission considers that the friendly settlement agreement has a partial level of compliance and so declares it. In this regard, the Commission will continue to monitor the implementation of the FSA until full compliance is achieved.

14. Finally, the Commission considers that the rest of the content of the agreement is of a declarative nature and therefore it is not for the Commission to supervise it.

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 July 5, 2022.
2. To declare partial compliance with clause II. 2 (on the payment of reparations to the successors of the deceased) of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare clauses II.1 (payment of pecuniary reparation), II.3 (issuance of the resolution granting the reparation benefit provided for in Law No. 24.043) and II.4 (term) of the friendly settlement agreement pending compliance, according to the analysis contained in this report.
4. To declare that the friendly settlement agreement has a level of partial compliance, according to the analysis contained in this report.
5. To continue monitoring compliance with clauses II.1 (payment of pecuniary reparation), II.2 (on the payment of reparations to the successors of the deceased), II.3 (issuance of the resolution granting the reparation benefit provided for in Law No. 24.043) and II.4 (term) of the friendly settlement agreement, according to the analysis contained in this report. To this end, to remind the parties of their commitment to report periodically to the IACHR on their compliance.
6. 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 20th 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.