

OAS/Ser.L/V/II
Doc. 238
20 October 2023
Original: Spanish

REPORT No. 219/23

CASE 14.536

REPORT ON FRIENDLY SETTLEMENT

EDUARDO HUGO MOLINA ZEQUEIRA
ARGENTINA

Approved electronically by the Commission on October 20, 2023.

Cite as: IACHR, Report No. 219/23, Case 14.536. Friendly Settlement. Eduardo Hugo Molina Zequeira. Argentina. October 20, 2023.

REPORT No. 219/23
CASE 14.536
FRIENDLY SETTLEMENT
EDUARDO HUGO MOLINA ZEQUEIRA
ARGENTINA
20 DE OCTUBRE DE 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On November 1, 2010, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Elena Carmen Moreno and Myriam Carsen, (hereinafter "the petitioners"), alleging the international responsibility of the Republic of Argentina (hereinafter "State" or "Argentine State" or "Argentina"), for the violation of the human rights enshrined in Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection), in relation to Article 1 (obligation to respect) of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention"), for the lack of reparation to Mr. Eduardo Hugo Molina Zequeira (hereinafter "the alleged victim") for the damages caused to his right to liberty, which forced him to go into exile in Spain during the last civil-military dictatorship in Argentina, as well as the denial of justice for violation of judicial guarantees, judicial protection and equality and non-discrimination in the course of the civil proceedings based on Law No. 24,043 of the Argentine State.

2. On March 9, 2021, the Commission issued Admissibility Report No. 58/21, in which it declared the petition admissible as well as its competence to hear the claim presented by the petitioners with regard to the alleged violation of the rights contained in Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to Articles 1. 1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) thereof.

3. On May 31, 2022, the Commission notified the parties of the initiation of the friendly settlement process, which previously materialized in the subscription of a friendly settlement agreement (FSA) on February 23, 2022. On January 3, 2023, the State informed of the issuance of Decree No.865/22 of the National Executive Branch approving the respective agreement and requested the approval and publication of the agreement. Likewise, on June 28, 2023, the State sent the certificate of approval of the ministerial resolution that was the object of the friendly settlement. In turn, on August 31, 2023, the petitioners asked the Commission for the corresponding homologation, as established in the FSA.

4. 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 petitioners and a transcript of the friendly settlement agreement signed on February 23, 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 to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioner argued that the alleged victim, a Peronist activist, and his companion, María Zaide El Gáname (hereinafter "María Zaide"), were persecuted during the dictatorship and had to take refuge in Spain in 1979, María Zaide was detained together with her sister Zulema Josefina El Gáname (hereinafter "Zulema Josefina") at the disposal of the Executive Power and prosecuted for political acts from June 22, 1971 to May 25, 1973. The petitioner held that on September 6, 1976, Zulema Josefina was murdered, after which the couple had to live hiding for years in social ostracism. Due to the foregoing, the petitioner argued that the couple decided to take refuge after a search procedure for both of them in the homes of relatives and due to María Zaide's pregnancy. Petitioner alleged that they were recognized by UNHCR Spain as refugees on March 10, 1980. The petitioner also held that María's name was found in the "Archive of Terror in Paraguay" as part of "Operation Condor".

6. As stated in the petition, in 2004, the alleged victim applied for economic reparation under Law No. 24,043 to the Secretariat of Human Rights, which considered that the requirements of said law were met and favorably granted the benefit. In view of the Ministerial Resolution denying said benefit, a direct appeal was filed before the National Court of Appeals for Federal Administrative Matters, Chamber I, on April 30, 2007. The appeal was admitted with the recognition that the condition of the alleged victim was contemplated in Law No. 24,043, as it was the only alternative to save his life, since the referred law should be applied to all cases in which ambulatory freedom had been violated. The Ministry of Justice and Human Rights filed an appeal before the Supreme Court of Justice of the Nation, which on December 22, 2008 annulled the decision due to lack of evidence analysis. On August 12, 2009, the IV Chamber rejected the request due to lack of evidence of persecution and the certificate issued by UNHCR. An extraordinary appeal was filed before the Supreme Court of Justice, which was rejected due to non-compliance with the requirement of the number of lines per page. The alleged victim held that he was notified of the decision on May 4, 2010. The petitioner held that domestic remedies had been exhausted and that the rejection of the extraordinary appeal violated the right of access to justice recognized by the American Convention.

III. FRIENDLY SETTLEMENT

7. On February 23, 2022, the parties signed a friendly settlement agreement in the Autonomous City of Buenos Aires, the text of which provides the following:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case No. 14.536 of the registry of the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Dr. Elena Carmen Moreno and Dr. Myriam Carsen, in their capacity as counsel for the petitioner, Eduardo Hugo Molina Zequeira, and the Argentine Republic, in its capacity as State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting under the express mandate of Article 99 paragraph 11, represented by the Undersecretary for International Human Rights Protection and Liaison and the National Director of International Human Rights Legal Affairs of the Secretariat of Human Rights, Dr. Andrea Pochak and Dr. 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, respectively. A. Javier Salgado, have the honor to inform the IACHR that they have reached a friendly settlement agreement in the case, the contents of which are the following.

I. Background

On November 1, 2010, Eduardo Hugo Molina Zequeira 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 relation to Article 1.1. thereof.

In the complaint, the petitioner holds that, because of his political activism, Mr. Molina Zequeira was persecuted during the last civil-military dictatorship, for which reason he had to take refuge in Spain.

By virtue of these facts, Mr. Molina Zequeira filed an application for the benefit ruled by Law No. 24,043, which was rejected in administrative and judicial proceedings.

On October 2, 2017, the IACHR forwarded the petition to the Argentine State.

On March 9, 2021, the Commission approved Admissibility Report No. 58/21. There it declared the complaint admissible with regard to the possible violation of the rights

enshrined in Articles 8, 24 and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof.

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 for cases of forced exile to apply the new doctrine set forth by the Office of the Attorney General of the Treasury of the Nation in Ruling No. IF-2020-36200344-APN-PTN. In view of this, following the notification of Report No. 58/21 of the illustrious IACHR, the National Directorate of International Legal Affairs in Human Rights Matters of the National Secretariat of Human Rights consulted the Directorate of Management of Reparatory Policies as to whether the criteria currently in force would allow for the recognition of the petitioner's claim 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 kind.

The State considers that Mr. Molina Zequeira has been a victim of political persecution by the civil-military dictatorship that besieged the Argentine Republic between March 24, 1976 and December 10, 1983. In view of this, in line with IF-2022-08501103-APN-SSPYEIDH#MJ of the National Secretariat for Human Rights and pursuant to its international human rights obligations, the Argentine State understands 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 shall be granted in accordance with the scheme provided for by Law No. 24,043, considering for said purpose the entire period during which Mr. Eduardo Hugo Molina Zequeira remained in forced exile, in accordance with Ruling IF-2022-08501103-APN-SSPYEIDH#MJ. That is, from October 29, 1979 to October 28, 1983.
2. The Argentine State undertakes that, within three (3) months from the publication in the Official Gazette of the Argentine Republic of the Decree of the National Executive Power approving this agreement, a ministerial resolution shall be issued granting the reparation benefit provided for in Law No. 24,043, without additional costs or expenses. The amount of the reparation shall be calculated as of the date of the issuance of said ministerial resolution.
3. The State also undertakes to comply with the term of Article 30 of the regulation of Chapter V of Law No. 25,344, provided for in Executive Decree No. 1116/2000.
4. Once the petitioner submits to the National Administration of Social Security (ANSES) a valid copy of his national identity document and the form (PS.6.298) for requesting the benefit provided for in Law No. 26.913, correctly completed, and signs the affidavit attached as an annex, the Argentine State undertakes to issue the corresponding resolution within three (3) months.
5. Upon payment of the reparation provided for in section II.2 of this agreement, the petitioner definitively and irrevocably waives the right to initiate any other pecuniary claim against the State in connection with 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 Power.

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 23rd day of February, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

8. 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.¹ 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.

9. 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.

10. Pursuant to Clause III of the agreement, and in view of the State's confirmation of January 3, 2023, regarding the issuance of Decree No. 865/22 of the National Executive Branch approving the FSA, as well as the petitioner's request of August 31, 2023, to proceed with its homologation, it is appropriate at this time to assess compliance with the commitments established in this instrument.

11. In relation to clause II.2 . on the issuance of the ministerial resolution granting the reparation benefit provided for in Law No. 24,043, the Commission notes that on June 28, 2023, the State informed that on June 22, 2023, the Minister of Justice and Human Rights of the Nation issued resolution RESOL-2023-689-APN-MJ, through which it resolved to grant Mr. Eduardo Hugo Molina Zequeira the benefit provided for in Law No. 24,043, establishing the compensable days and the corresponding compensatory amount. This information was made known to the petitioner. In view of the foregoing, the Commission considers that clause II.2. on the issuance of the ministerial resolution to make the reparation effective in favor of Mr. Molina Zequeira, has been fully complied with and it so declares.

12. On the other hand, with regard to clauses II.1. (payment of pecuniary reparation), II.3. (term) and II.4. (resolution under Law No. 26,913) of the friendly settlement agreement, the Commission considers that they are pending compliance and it so declares. Therefore, the Commission considers that the friendly settlement agreement has a partial level of compliance and it so declares. In this regard, the Commission will continue to monitor the implementation of the FSA until full compliance has been achieved.

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.*

13. Finally, the IACHR considers that the rest of the content of the friendly settlement agreement is of a declarative nature, and therefore it is not up to supervision.

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 February 23, 2022.
2. To declare clause II.2. (issuance of ministerial resolution of Law No. 24,093) of the friendly settlement agreement to be fully complied with, according to the analysis contained in this report.
3. To declare clauses II.1 (payment of pecuniary reparation), II.3 (term) and II.4 (resolution under Law No. 26,913) of the friendly settlement agreement to be pending, 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.3 (term) and II.4 (resolution under Law No. 26,913) of the friendly settlement agreement, pursuant 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.