

OAS/Ser.L/V/II.150
Doc. 231
20 October 2023
Original: Spanish

REPORT No. 212/23
CASE 14.781
REPORT ON FRIENDLY SETTLEMENT

LUIS CARLOS ABREGU
ARGENTINA

Approved electronically by the Commission on October 20, 2023.

Cite as: IACHR, Report No. 212/23, Case 14.781. Friendly Settlement. Luis Carlos Abregu.
Argentina. October 20, 2023.

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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On February 5, 2013, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Luis Carlos Abregú (hereinafter "alleged victim"), with the legal representation of Elena Carmen Moreno and Myriam Carsen (hereinafter "the petitioners" or "the petitioning party"), claiming 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 context of Law No. 24,043.

2. On November 4, 2021, the Commission issued Admissibility Report No. 307/21, in which it declared the petition admissible as well as its competence to hear the claim raised 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) contained in the American Convention in relation to Articles 1.1 (obligation to respect) and 2 (duty to adopt provisions of domestic law) thereof.

3. On September 15, 2022, the parties initiated a friendly settlement process with the facilitation of the Commission, which materialized in the subscription of a friendly settlement agreement (hereinafter "FSA") on July 5, 2022. On May 5, 2023, the State informed of the issuance of Decree No. 245/2023 of April 28, 2023 of the National Executive Branch approving the respective agreement and, in turn, requested the Commission the corresponding homologation, as established in the FSA. On August 25, 2023, the petitioners requested the Commission the corresponding homologation.

4. This friendly settlement report, pursuant to 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 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 held, in summary, that: (i) Mr. Abregú was allegedly detained at the disposal of the National Executive Branch from July 21, 1975 to May 4, 1978; ii) during his detention, like the other political prisoners under maximum security regime, he suffered cruel, inhumane and degrading treatment; iii) in May 1978, upon leaving prison, he was forced to leave the country, since upon returning to his home in the province of Tucumán, he noticed that he was being followed and learned from a neighbor that the security forces were searching his home; iv) having suffered cruel, inhumane and degrading treatment and knowing of many political prisoners who were killed, he reportedly interpreted the police search of his home as a threat to his life and decided to leave the country; v) the suspicion of persecution was confirmed decades later, when State documents could be accessed and contained records on Mr. Abregú, proceedings to locate him and allegations that he was an agent of communism by virtue of a trip he made to Cuba in 1961 (although Mr. Abregú was only four years old that year); vi) since he did not have a passport and could not apply for one under those conditions, as he risked being kidnapped at the Police Department, Mr. Abregú allegedly asked for help from the State of Israel, since he was of Jewish descent; vii) in August 1978, Mr. Abregú allegedly migrated

to Uruguay, having received a clearance, and was then issued an Israeli passport and requested to join the army to perform military service; viii) in September 1978, Mr. Abregú allegedly entered Israel; feeling that joining the army could mean a tacit abandonment of his Argentine nationality, he decided to migrate again and settled in Brazil until 1989, when he returned to Argentina for good.

6. In view of the foregoing, the petitioners argued, Mr. Abregú had requested to be included in the reparation policies implemented by Argentina under Law 24.043. This request was rejected by Resolution No. 266/09, for which reason he filed a review remedy based on Article 22 B of the Administrative Procedures Law, as well as the direct remedy provided for in Article 3 of Law 24,043. The appeals were reportedly rejected. The rejection of the direct appeal was allegedly justified by Chamber IV of the National Court of Appeals for Federal Administrative Matters in terms of lack of evidence of the persecution that Mr. Abregú claimed to have suffered. Upon such decision, he reportedly filed an extraordinary federal appeal, which was declared inadmissible by Chamber V of said court on the grounds that the appellant had not been able to prove the persecution he claimed to have suffered: "He has not complied with the requirement related to the number of lines per page, as required by section 1 of the regulations approved by Resolution 4/2007". In conclusion, an Extraordinary Complaint Remedy was filed and denied directly before the Supreme Court of Justice of the Nation (CSJN). Nonetheless, despite an opinion of the Attorney General of the Nation in favor of granting the appeal and the requested compensation, the Supreme Court decided, on August 5, 2012, to declare the complaint inadmissible, with the same argument as the previous decision, due to the original non-compliance with the diagramming requirements.

7. The petitioners argued that the court's decision had created a manifestly unequal situation by depriving Mr. Abregú of what was granted to other politically persecuted persons who had to go into exile. In this regard, the petitioner cited the Yofre de Vaca Narvaja ruling (a decision which granted economic compensation to persons who had to leave the country to safeguard their life or freedom). Likewise, they pointed out that formalism in the judgment of admissibility of the extraordinary appeal would be contrary to the reiterated jurisprudence of the CSJN, according to which "the interpretation of procedural provisions cannot prevail over the need to give primacy to the objective legal truth, so that its clarification is disturbed by an excessive formal rigor, incompatible with an adequate service of justice and the rules of due process, especially when there is a constitutional basis for the need to give priority to the former, as a way to prevent a ritual concealment, and to safeguard the principles which arise from Article 18 of the National Constitution" ("Judgments 310:799; 317: 1759; 322: 1526; 326: 1395").

III. FRIENDLY SETTLEMENT

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

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case No. 14.781 of the record of the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Petitioner Luis Carlos Abregú, Elena Carmen Moreno and Myriam Carsen, in their capacity as attorney-in-fact and sponsoring 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 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, have the honor to inform the Honorable Commission that they have reached a friendly settlement agreement in the case, the contents of which are as follows.

I. Background

On February 5, 2013, Luis Carlos Abregú 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 his complaint, the petitioner explains that Mr. Abregú was detained at the disposal of the National Executive Branch from July 21, 1975 to May 4, 1978 and, upon his release from prison, he was forced to leave the country.

By virtue of these facts, Mr. Abregú filed an application for the granting of the benefit governed by Law No. 24,043 before the Ministry of Justice and Human Rights, which was rejected in relation to the forced exile. His claim was also rejected in court.

On November 27, 2017, the IACHR transferred the petition to the Argentine State.

On November 4, 2021, the Commission approved Admissibility Report No. 307/21. There it declared the admissibility of the complaint in relation to Articles 8, 24 and 25 of the American Convention, in relation to its 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 to apply the new doctrine set forth by the Office of the Attorney General of the Treasury of the Nation in Decision No. IF-2020-36200344-APN-PTN. In view of this, 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 as to whether the criteria currently in force would allow 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, with no other claim for reparation of an economic nature or of any other kind.

The State considers that Mr. Luis Carlos Abregú has been a victim of political persecution by the civil-military dictatorship which afflicted the Argentine Republic between March 24, 1976 and December 10, 1983. In view of this, in line with IF-2022-61478638-APN-DNAJIMDDHH#MJ of the National Human Rights Secretariat and in compliance with its international human rights obligations, the Argentine State understands that the petitioner is entitled to adequate reparation for the violations he suffered.

II. Measures to be adopted

1. The parties agree that pecuniary reparation will be granted in accordance with the scheme provided for by Law No. 24,043, considering for this purpose the entire period during which Mr. Luis Carlos Abregú remained in forced exile, according to ruling IF-2022-61478638-APN-DNAJIMDDHH#MJ. That is, from September 4, 1978 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 Branch 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 undertakes to comply with the term of Article 30 of the regulation of Chapter V of Law No. 25,344, provided for in Decree No. 1116/2000 of the National Executive Branch.

4. Upon payment of the reparation provided for 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 gave rise to the present case.

III. *Ad referendum* signing

The parties declare 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.

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.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.

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. Pursuant to Clause III of the agreement, and in view of the State's confirmation of May 5, 2023, concerning the issuance of Decree No. 245/2023 of the National Executive Branch approving the FSA, as well as the petitioner's request of August 25, 2023, to move forward with its homologation, it is appropriate at this time to assess compliance with the commitments set forth in this instrument.

12. With regard to clause II.2, on the issuance of the ministerial resolution granting the reparation benefit provided for in Law No. 24,043, the Commission observes that, on June 26, 2023, the State reported that on June 21, 2023, the Minister of Justice and Human Rights of the Nation issued resolution RESOL-2023-684-APN-MJ, through which it resolved to grant Luis Carlos Abregú the benefit provided in Law No. 24,043, establishing the compensable days and the corresponding compensatory amount. This information was made known to the petitioner. Therefore, the Commission considers that clause II.2 on the issuance of the Ministerial

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.*

resolution to make effective the reparation in favor of Mr. Abregú, has been fully complied with and it so declares.

13. On the other hand, with regard to clauses II.1 (payment of pecuniary reparation) and II.3 (term) 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 level of partial compliance and it so declares. 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 clause II. 2 (issuance of ministerial resolution of Law 24,043) of the friendly settlement agreement fully complied with, according to the analysis contained in this report.
3. To declare clauses II.1 (payment of pecuniary reparation) and II.3 (time limit) of the friendly settlement agreement to be pending compliance, according to the analysis contained in this report.
4. To declare that the friendly settlement agreement has a level of partial compliance, based on the analysis contained in this report.
5. To continue monitoring compliance with clauses II.1 (payment of pecuniary reparations) and II.3 (term) 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 publish the present report 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:) Margarette 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.