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CASE 14.739
REPORT ON FRIENDLY SETTLEMENT

MARY BEATRIZ GUERRA PEÑA
ARGENTINA

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FRIENDLY SETTLEMENT
MARY BEATRIZ GUERRA PEÑA
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MAY 21, 2024

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On August 30, 2010, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition filed by Mary Beatriz Guerra Peña (hereinafter the "alleged victim"), with the legal representation of Eugenio Marcelo Guillermo Spota and María Lucrecia Lombardi (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 set forth in articles 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), 22 (movement and residence), 24 (equal protection), and 25 (judicial protection), read in conjunction with articles 1 (obligation to respect) and 2 (duty to adopt provisions of domestic law) of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention"), to the detriment of the alleged victim as a result of the deprivation of her liberty that subsequently led to her self-exile, as well as the violations of due process and rejection of her request for economic compensation for her forced exile, filed in the framework of Law 24,043.

2. On October 5, 2021, the Commission issued Admissibility Report No. 270/21, in which it declared the petition admissible and declared its authority to hear the claim presented by the petitioners regarding the alleged violation of the rights contained in Articles 8 (right to a fair trial), 24 (equal protection of the law) and 25 (judicial protection) of the American Convention, read in conjunction with Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects) of the same instrument, to the detriment of Mary Beatriz Guerra Peña.

3. On November 14, 2022, the parties signed a friendly settlement agreement (hereinafter "FSA"), which, on August 30, 2023, initiated a friendly settlement process facilitated by the Commission. Subsequently, on October 12, 2023, the State reported the National Executive Branch's issuance of Decree 515/2023 on October 5, 2023, approving the respective agreement, as well as requesting the Commission's corresponding approval thereof, as established in the FSA. For their part, on December 18, 2023, the petitioners requested the Commission for the corresponding approval.

4. Pursuant Article 49 of the American Convention and Article 40(5) of the Rules of Procedure of the Commission, this friendly settlement report includes a summary of the facts alleged by the petitioners and includes a transcription of the friendly settlement agreement, signed on November 14, 2022, by the petitioning party and the representatives of the Argentinian State. Likewise, the agreement signed by 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 indicated that in January 1974 the alleged victim, her husband—Daiver Ramón Borgunder Bolazzi—and her son—Alejandro María Borgunder Guerra—all uruguayan nationals, left Uruguay for political reasons and legally entered the city of Buenos Aires. At the end of 1974, they moved to the province of Jujuy for work. On April 20, 1975, the accused were detained by the Argentine Federal Police at the Sibi-Sibi hotel in the city of San Salvador, Jujuy. They stated that the reason for the arrest was the fact that the family was required to show their uruguayan identity cards. According to the petitioner, the alleged victim was detained for one day, but her husband was taken to the headquarters of the Federal Police and subjected to unlawful coercion, placed at the disposal of the National Executive Branch, and sent to the San Salvador de

¹ In accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Andrea Pochak, an Argentinian national, did not participate in the discussion or decision on this case.

Jujuy jail, where he was deprived of his liberty until August 19, 1975. While Mr. Daiver Ramón Borgunder Bolazzi was deprived of his liberty, the couple's daughter, Laura Borgunder Guerra, was born on May 8, 1975.

6. In view of these facts, the family requested political asylum in Sweden, which was granted on August 19, 1975; on September 22, 1975, the family traveled to that country as "expellees" from Argentina. Subsequently, after the return to democracy, the alleged victim and her husband returned to Uruguay.

7. The petitioners indicated that the alleged victim and her husband requested economic reparations under Law 24,043 due to the forced exile, both of them for the period from November 6, 1974, to December 10, 1983. The claim filed by Mr. Daiver Ramón Borgunder Bolazzi was granted by the Ministry of Justice and Human Rights on November 7, 2000, which recognized that reparations were due for 3,120 days of detention and forced exile. On November 1, 2005, the Secretary of Human Rights acknowledged the political persecution suffered by the alleged victim. On December 21, 2005, the General Directorate of Administration of the Ministry of Human Rights concluded that the alleged victim never received the compensation under Law 24,043 and on the same date, proceeded to calculate what should be considered the compensable period. However, the Ministry of Justice rejected the alleged victim's request on September 13, 2006, on the grounds that her case did not meet the requirements of the "Yofre de Vaca Narvaja" case, i.e., the alleged victim's husband and children had not been murdered.

8. On September 20, 2006, the alleged victim filed a direct appeal before the National Chamber of Appeals for Federal Administrative Disputes, which was rejected on the grounds that the alleged victim's case was a "voluntary self-exile." It found that the one-day detention of the alleged victim did not meet the requirements established in Law 24,043. It also found that there was no evidence the detention was at the behest of military authorities and that Ms. Peña had not been placed at the disposal of the Executive Branch. The petitioners filed an extraordinary federal appeal of this decision before the Supreme Court of Justice of the Nation, which upheld the appealed judgment and rejected compensation for the alleged victim. In doing so, it adopted the opinion of the Public Prosecutor, which rejected the request for compensation by repeating arguments identical to the ones in the judgment, without analyzing the alleged victim's claims. The alleged victim was notified of the judgment on March 1, 2010.

III. FRIENDLY SETTLEMENT

9. On November 14, 2022, the parties signed a friendly settlement agreement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case n° 14.739 of the registry of the illustrious Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Eugenio M. Spota and María Lucrecia Lambardi, in their capacity as counsel for the petitioner Mary Beatriz Guerra Peña, and the Argentine Republic, in its capacity as State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting by express mandate of Article 99(11) of the National Constitution, represented by the Undersecretary for Human Rights Protection and International 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 Religion of the Nation, Dr. A. Javier Salgado, have the honor of informing the distinguished Commission that they have reached a friendly settlement agreement in the case, the contents of which are set forth below.

I. Background

On August 30, 2010, Mary Beatriz Guerra Peña filed a petition before the Inter-American Commission alleging violation of articles 5 (right to humane treatment), 7 (personal liberty), 8 (judicial guarantees), 22 (movement and residency), 24 (equal protection) and

25 (judicial protection) of the American Convention read in conjunction with articles 1(1) and 2 of the Convention.

In her complaint, the petitioner states that toward the beginning of 1974, due to "the unbearable political persecution against her," Ms. Guerra Peña and her family had to leave the Oriental Republic of Uruguay and move to the City of Buenos Aires. Toward the end of 1974, they traveled to Jujuy for work, where they allege having been the victims of persecution and threats.

The petition emphasizes that as a consequence of the detention of her husband, Daiver Borgunder, who was placed at the disposal of the National Executive Branch, Ms. Guerra Peña made representations to UNHCR. They were subsequently recognized as refugees by the UNHCR office in Argentina and resettled in Sweden on August 22, 1975.

In view of these facts, Ms. Guerra Peña filed a request before the Ministry of Justice and Human Rights for the benefit provided for under Law N° 24.043. The request was rejected. Her claim was also rejected in court.

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

On October 5, 2021, the Inter-American Commission approved Admissibility Report n° 270/21. Therein, it declared the complaint admissible for the possible violations of articles 8, 24, and 25 of the American Convention, read in conjunction with articles 1(1) and 2 of the Convention.

In this context—and taking into account Resolution n° 280 of August 6, 2020, of the former Minister of Justice and Human Rights of the Nation, in which she instructed the areas involved in processing applications for the benefit provided for under Law n° 24.043 to apply the new doctrine set forth by the Treasury Management Office of the Nation in Opinion n° IF-2020-36200344-APN-PTN—the National Directorate of International Legal Affairs in Human Rights Matters of the National Secretariat of Human Rights consulted the Directorate for Management of Reparation Policies as to whether the criteria currently in force would allow for recognition of the petitioner's claim of a situation of exile.

Following its answer in the affirmative, a process of dialogue with the petitioner was launched. The request for reparations was narrowed to the expedited granting of the benefit requested earlier, with no other claim for financial or any other type of reparations.

The State acknowledges that Ms. Mary Beatriz Guerra Peña has been the victim of political persecution by agents of the Argentine State. In view of this, pursuant to IF-2022-104548251-APN-DNAJIMDDHH#MJ of the National Secretariat of Human Rights and in compliance with its international human rights obligations, it is the understanding of the Argentine State that the petitioner has the right to be adequately compensated for the violations she has suffered.

II. Measures to be adopted

1. The parties hereby agree that monetary reparation shall be granted in accordance with the framework provided by Law N° 24.043, considering to that end the entire length of time during which Mrs. Mary Beatriz Guerra Peña remained in forced exile, in accordance with opinion IF-2022-104548251-APN-DNAJIMDDHH#MJ. That is, from August 22, 1975, to October 28, 1983.

2. The Argentine State undertakes to issue, within three (3) months from the date of publication in the Official Gazette of the Argentine Republic (*Boletín Oficial de la República Argentina*) of the Decree of the National Executive Branch approving this agreement, the ministerial resolution granting the monetary benefit established by Law N° 24.043, without additional cost or expenses. The amount of the compensation shall be estimated as of the date of the issuance of the aforementioned ministerial resolution.

3. Once the petitioner submits a true copy to the National Administration of Social Security (ANSES) of her national identity document, along and the form (PS.6.298) requesting the benefit provided for in Law N° 26.913—filled out correctly—and signs the affidavit attached as an annex, the Argentine State undertakes to issue the corresponding resolution within three (3) months.

4. The State hereby undertakes to comply with the term set forth in Article 30 of the rules of Chapter V of Law No. 25.344, as set forth in Executive Decree N° 1116/2000.

5. Upon payment of the compensation established in section II.2 of this agreement, the petitioner, definitively and irrevocably waives, the right to initiate any other claim against the State for monetary reparation in connection to the facts that gave rise to the instant case.

III. Signature *ad referendum*

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 petitioners hereby welcome the signing of this agreement, manifest their full agreement 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 Republic of Argentina, the Inter-American Commission on Human Rights shall be requested, through the Ministry of Foreign Affairs, International Trade, and Religion, to adopt the report pursuant to Article 49 of the American Convention on Human Rights, at which time this agreement shall acquire full legal effect.

Three copies of the document are hereby signed in the Autonomous City of Buenos Aires on the 14th day of the month of November 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

10. 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.

11. 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.

12. As established in Clause III of the Agreement, and in view of the State's confirmation dated October 12, 2023, regarding the issuance of Decree No. 515/2023 of the National Executive Branch approving the FSA, together with the request of the petitioning party of December 18, 2023, to move forward with its approval, it is appropriate at this time to assess compliance with the commitments established in this instrument.

13. With respect to Clause II.2, regarding the issuance of the ministerial resolution granting the compensation benefit established by Law No. 24.043, the Commission notes that on December 6, 2023, the State reported that on November 27, 2023, the Minister of Justice and Human Rights of the Nation issued

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.

resolution RESOL-2023-1423-APN-MJ, whereby it granted Mary Beatriz Guerra Peña the benefit provided for under Law No. 24.043, establishing the number of days eligible for compensation and the corresponding compensation amount. This information was brought to the attention of the petitioner. Therefore, the Commission considers and hereby declares, that the Clause II.2—on the issuance of the ministerial resolution to effectively grant reparations to Ms. Guerra—has been met with full compliance.

14. On the other hand, regarding Clauses II.1 (payment of monetary reparation), II.3 (issuance of the resolution under Law No. 26,913), and II.4 (term) of the friendly settlement agreement, the Commission considers, and hereby declares, that compliance is still pending. The Commission therefore finds, and hereby declares, that the friendly settlement agreement has been met with partial compliance. In this regard, the Commission will continue to monitor the implementation of the FSA until full compliance with its terms has been achieved.

15. Finally, the Commission considers that the rest of the content of the agreement is of declarative nature, and therefore it is not the Commission's responsibility 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 November 14, 2022.
2. To declare that clause II. 2 (issuance of ministerial resolution under Law No. 24,043) of the friendly settlement agreement has been fully complied with meets with full compliance, according to the analysis contained in this report.
3. To declare clauses II.1 (payment of monetary reparation), II.3(issuance of the resolution under Law No. 26.913) 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 reached a level of partial compliance, according to the analysis contained in this report.
5. To continue to monitor compliance with clauses II.1 (payment of monetary reparation), II.3 (issuance of the resolution under Law No. 26.913) and II.4 (term) of the friendly settlement agreement, pursuant to the analysis contained in this report. To that end, to remind the parties of their commitment to report periodically to the IACHR regarding compliance with the agreement.
6. To publish this 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 21st day of the month of May, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; José Luis Caballero Ochoa, Second Vice President; Edgar Stuardo Ralón Orellana, Arif Bulkan, and Gloria Monique de Mees, Commissioners.