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CASE 14.770
REPORT ON FRIENDLY SETTLEMENT

ALICIA MARIA JARDEL
ARGENTINA

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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On April 30, 2011, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Alicia María Jardel (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 relation to 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 her request for economic reparation, as a result of her forced exile, filed within the context of Law No. 24,043.

2. On November 4, 2021, the Commission issued Admissibility Report No. 302/21, 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) of 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 26, 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 30, 2023, the State informed of the issuance of Decree No. 276/2023 of May 23, 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 3, 2023, the petitioners requested the Commission the corresponding homologation.

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 transcribes 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 petitioner alleged that Alicia Jardel left for exile on November 22, 1978; her husband, Alejandro Polanco, was expelled from the country by Resolution 963 of April 7, 1978, ordering his pretrial detention. The aforementioned departure into exile originated in the persecution of which they were victims not only with the detention and expulsion of her husband, but also with the impediment to continue with their journalism studies, the permanent harassment, and the monitoring by state security forces and paramilitary groups, within the sphere of the state terrorism that took place in the country. The petitioner was dismissed from the General Secretariat of the Ministry of Education of Mendoza where she worked; both the petitioner and her husband were expelled from the School of Journalism where they were studying; many of Jardel's colleagues and her husband's colleagues were detained and killed for political reasons. On March 14, 1979, she was granted final asylum by the United Nations High Commissioner for Refugees (UNHCR), at which time they were already residing in Belgium, where Jardel continues to live to this day. In accordance with the statutes governing refugee declarations, the situation of political persecution of the family group was accredited, according to a certificate issued by the UNHCR.

6. In view of the above, on September 10, 1998, Mrs. Jardel requested to be included in the reparation policies implemented by the Argentine Republic within the scope of Law 24.043, on the grounds that the deprivation of her liberty to remain in her country of origin constituted an impairment of her liberty comparable to the cases provided for in the aforementioned law. Said petition was rejected by means of a resolution issued by the Ministry of Justice and Human Rights under the National Executive Branch, for which reason the direct appeal provided for in section 3 of Law 24.043 was filed. The rejection was based on the fact that, although the forced exile was proven, the interpretation made by the administration at the time the resolution was issued was restrictive.

7. The petitioner argued that the aforementioned interpretation would be contradictory to the provisions in many other cases. Likewise, the rejection by Chamber IV of the National Court of Appeals for Federal Administrative Matters was based on the fact that the alleged situation of exile had not been proven. After processing all the domestic remedies up to the Supreme Court of Justice of the Nation, the latter rejected the Federal Extraordinary Appeal filed. The petitioners argue that the court's decision creates a situation of manifest inequality, by depriving Alicia María Jardel of what was granted to hundreds of politically persecuted persons who had to go into exile, among them Yofre de Vaca Narvaja, Pennette, Bossarelli, Masramón and Sabini. Specifically regarding the Yofre de Vaca Narvaja ruling, the petitioners hold that the Supreme Court of Justice of the Nation had recognized, in 2004, that the situation of those who had suffered forced exile was comparable to that of detainees.

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 n° 14.770 of the record of the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Myriam Carsen, in her capacity as counsel representing the petitioner Alicia María Jardel; and the Argentine Republic, as a State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting by 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 Legal Affairs in Human Rights Matters 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, respectively, 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 April 30, 2011, Alicia María Jardel 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 her complaint, the petitioner states that during the civil-military dictatorship that began in 1976, Mrs. Jardel and her husband had to go into exile in Belgium with their family group in order to safeguard their lives.

By virtue of these facts, Mrs. Jardel filed an request for the granting of the benefit governed by Law No. 24,043 before the Ministry of Justice and Human Rights, which was rejected. Her claim was also rejected in court.

On April 18, 2017, the IACHR transferred the petition to the Argentine State.

On November 4, 2021, the Commission approved Admissibility Report No. 302/21. It declared the admissibility of the complaint in relation to 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 foreseen in Law No. 24,043 to apply the new doctrine set forth by the Attorney General's Office 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 to determine whether the criteria currently in force would allow the acknowledgement 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 type.

The State considers that Mrs. Alicia María Jardel 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-2022-61478535-APN-DNAJIMDDHH#MJ of the National Secretariat for Human Rights and in compliance with its international human rights obligations, the Argentine State understands that the petitioner is entitled to adequate reparation for the violations she 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 this purpose the entire period during which Mrs. Alicia María Jardel remained in forced exile, according to ruling IF-2022-61478535-APN-DNAJIMDDHH#MJ. That is, from November 22, 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 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 such ministerial resolution.
3. Once the petitioner submits to the National Administration of Social Security (ANSES) a legitimate copy of her national identity document and the form (PS.6.298) for requesting the benefit provided for in Law No. 26,913, correctly filled in, and signs the affidavit attached as an annex, the Argentine State undertakes to issue the corresponding resolution within three (3) months.
4. 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 Executive Decree No. 1116/2000.
5. Following 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 motivated the present case.

III. *Ad referendum* signing

The parties express 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 contemplated in Article 49 of the American Convention on Human Rights, at which time the agreement will acquire full legal force and validity.

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. As established in Clause III of the agreement, and in view of the State's confirmation of May 30, 2023, regarding the issuance of Decree No. 276/2023 of the National Executive Branch approving the FSA, as well as the petitioner's request of August 3, 2023, to move forward with its homologation, it is appropriate at this time to assess compliance with the commitments established 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 July 14, 2023, the State reported that on July 12, 2023, the Minister of Justice and Human Rights of the Nation issued resolution RESOL-2023-747-ANP-MJ, through which it resolved to grant Alicia María Jardel the benefit foreseen 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 Mrs. Jardel, has been fully complied with and it so declares.

13. On the other hand, with regard to clauses II.1 (payment of pecuniary reparation), II.3 (resolution under Law No. 26,913) and II.4 (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 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.*

14. Finally, the Commission considers that the rest of the content of the agreement is of a 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 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), II.3 (resolution under Law No. 26,913) and II.4 (term) 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, pursuant to the analysis contained in this report.
5. To continue to monitor compliance with clauses II.1 (payment of pecuniary reparation), II.3 (resolution under Law No. 26,913) and II.4 (deadline) 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.