

OEA/Ser.L/V/II.150
Doc. 356
11 December 2022
Original: Spanish

REPORT No. 349/22

CASE 13.869

REPORT ON FRIENDLY SETTLEMENT

SILVIA MÓNICA SEVERINI
ARGENTINA

Approved electronically by the Commission on December 11, 2022.

Cite as: IACHR, Report No. 349/22. Case 13.869. Friendly Settlement. Silvia Mónica Severini. Argentina. December 11, 2022.

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FRIENDLY SETTLEMENT
SILVIA MÓNICA SEVERINI
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DECEMBER 11, 2022

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On November 4, 2010, the Inter-American Commission on Human Rights (hereinafter the "Commission" or "IACHR") received a petition lodged by Silvia Mónica Severini (hereinafter the "alleged victim"), with legal representation by Elena Carmen Moreno and Myriam Carsen (hereinafter the "petitioners"), alleging the international responsibility of the Argentine Republic (hereinafter the "State" or "Argentina") for violation of the human rights set forth in Articles 8 (right to a fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"), in relation to Article 1.1 (obligation to respect rights) of the same instrument, to the detriment of Silvia Mónica Severini, arising from violations of due process and the rejection of her request for economic reparation, as a result of her forced exile, filed under Law No. 24,043.

2. On December 6, 2019, the Commission issued Report on Admissibility No. 192/19, in which it declared the petition admissible and that it was competent to take up the petitioners' claim regarding the alleged violation of the rights enshrined in Articles 8 (right to a fair trial), 24 (equal protection) and 25 (judicial protection) of the Convention, in relation to the obligation established in Article 1(1) of the same instrument, to the detriment of Silvia Mónica Severini.

3. On February 9, 2022, the parties initiated a friendly settlement process facilitated by the Commission, which resulted in the signing of a friendly settlement agreement (FSA) on February 23, 2022. On September 12, 2022, the State announced the issuance of Executive Decree No. 591/2022 approving the agreement; in turn, on October 5, 2022, the petitioners requested the corresponding approval by the Commission, as established in the FSA.

4. Pursuant to Articles 49 of the American Convention and 40(5) of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the petitioners' allegations and transcribes the friendly settlement agreement signed on February 23, 2022, by the petitioners and representatives of the Argentine State. Also, the Commission hereby approves the agreement signed by the parties and decides to publish this report in its Annual Report to the General Assembly of the Organization of American States.

II. ALLEGED FACTS

5. The petitioners claim that the State of Argentina is internationally responsible for the violation of Ms. Silvia Severini's human rights in relation to the unlawful rejection of her request for compensation filed under Law No. 24,043, as a consequence of her forced exile.¹

6. The petitioners indicate that Silvia Severini was forced to leave Argentina in 1976, together with her family, as a result of the circumstances and as the only alternative to safeguard her freedom and integrity.² The petitioners submit that before her exile, the alleged victim had been subject to persecution and threats by the military dictatorship as a consequence of her political activism, her husband's and of their families. In this regard, they point out that Silvia Severini was detained twice because of her role as a student and political activist: the first in 1972 when she was prosecuted under Law No. 17,401, and in 1974, when she

¹ In the petition there are no allegations on violations perpetrated prior to the request for reparations.

² They indicate that the Security Forces searched intensely for Mrs. Silvia Severini, her husband Alfredo Juan Falú and the other members of their families. They point out that her husband's brother, Luis Eduardo Falú Baaclini, and her sister's husband, Luis Rómulo Giuffra Calvo, were victims of forced disappearances, and that the alleged victim, her husband and their youngest son were forced to leave the country in October of 1976 for Brazil and that they stayed there until their return to Argentina in 1983.

was arrested and prosecuted for the alleged commission of criminal damage offenses and resistance to authority in the context of a protest held at the Universidad Tecnológica Nacional. In addition, she had been dismissed from her position at the School of Philosophy and Letters of the National University of Buenos Aires, threatened and her application for a passport had been denied.

7. On November 30, 2004, Ms. Silvia Severini filed an application before the Secretariat on Social and Human Rights of the Ministry of Justice, Security and Human Rights, seeking compensation under Law No. 24,043 and its extension Law No. 24,906 on the ground of her forced exile. This request was filed in light of the broad interpretation adopted by the Argentine State on the scope of the provisions of the law and the fact that it had paid numerous compensation claims "to persons who were forced into exile [...] according to the criteria established by the National Supreme Court of Justice in the Yofre de Vaca Narvaja decision". However, the petitioners point out that on March 31, 2009, the Human Rights Secretariat dismissed her application by resolution No. 966/09, "because the requirements [for granting compensation] had not been met" pursuant to the analysis of the National Procurator of the Treasury in opinion No. 146-06 of June 2006.³

8. Although the resolution found that the alleged victim was out of the country as a forced exile and that the provisions of Law No. 24,043 and its extension Law No. 24,906 must be read as assigning to the concept "illegal detention" a comprehensive coverage of the situation of forced exile, the Secretariat established that exiles not preceded by a deprivation of liberty should not be compensated.

9. The petitioners point out that on May 13, 2009, the alleged victim filed an appeal before the National Court of Appeals for Contentious Administrative Matters [Cámara Nacional de Apelaciones en lo Contencioso Administrativo], questioning, inter alia, the arbitrariness of the decision, as well as the opinions of the Treasury Procurator and the effect thereof on the principle of equality before the law, and its arbitrary nature. However, the National Court upheld the ministerial refusal on June 23, 2009. The petitioners argue that, although the issue was a matter of law, as far as whether or not Law No. 24,043 included exile as a ground for compensation, the intervening Chamber of the Court of Appeals rejected the request for compensation on the grounds that the forced exile had not been proven, only merely Ms. Silvia Severini's residence in Brazil, and thus this was insufficient for granting the benefit provided for in Law No. 24,043 and its amendments.

10. They point out that on August 7, 2009, an extraordinary federal appeal was filed against this decision with the National Supreme Court of Justice, raising, among other issues: the scope of Law No. 24,043 and the areas covered by the international provisions regarding violations of human rights, refugee status and accreditation, lack of analysis of the evidence, arbitrariness of the actions of the administrative authorities, and incongruity due to excessive jurisdiction. However, even though in principle the Supreme Court issued a ruling on October 27, 2009, granting the extraordinary appeal, on April 20, 2010, the Court declared it ill-founded as it failed to comply with the requirement relating to the number of lines per page required in Article 1 of the rules No. 4/2007. The petitioners point out that "at the moment in which [the Court] started adopting this interpretation, and before it ruled on the matter—the petitioner filed the same brief before the Supreme Court with the required layout, and the Court ordered its return." In this sense, they highlight the violation of the guarantees of due process, as the justices "acted with excessive jurisdiction, ignored facts that had been expressly recognized, ignored the existence of relevant evidence, and that there had been a lack of access to justice due to excessively imposed formalities."

III. FRIENDLY SETTLEMENT

11. On February 23, 2022, the parties signed a friendly settlement agreement, which provides the following:

³According to the petitioner, the National Procurator of the Treasury established in this opinion, and subsequently confirmed in opinion No. 7-08, that "no economic compensation should not be paid" as a result of forced exile not preceded by a deprivation of liberty, in light of the fact that Law 24,043 failed to cover this situation.

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case No. 13.869 registered with the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): the petitioner, Silvia Mónica Severini, with her attorney Dr. Elena Carmen Moreno and the representation of Dr. Myriam Carsen, and the Argentine Republic, in its capacity as a State Party to the American Convention on Human Rights (hereinafter "the American Convention"), acting under the express mandate of Article 99 (11) of the Argentine 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, have the honor of informing the illustrious IACHR that they have reached a friendly settlement agreement in the case, the contents of which are provided below.

I. Background

On November 4, 2010, Silvia Mónica Severini filed a petition with the Inter-American Commission for violation of Articles 8 (right to a fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to Article 1(1) of the same instrument.

In her complaint, the petitioner states that because of her political activism as a student leader, her family was the victim of persecution and threats during the last civil-military dictatorship. She says that, for this reason, they were forced to go into exile in Brazil.

Based on the foregoing, Mrs. Severini filed an application for the benefit afforded under Law No. 24.043 with the Ministry of Justice and Human Rights, which application was dismissed. The petitioner stated before the IACHR that the administrative authority recognized that the alleged victim was living abroad in forced exile but considered that, in accordance with the decision of the National Treasury Prosecutor in opinion No. 146-06, situations of exile not preceded by deprivation of liberty should not be indemnified, since they were not included in the provisions of the aforementioned law. Her claim was also rejected in court.

On February 15, 2017, the IACHR forwarded the petition to the Argentine State.

On December 6, 2019, the Commission adopted Report on Admissibility No. 192/19. In that report, it declared the petition admissible in relation to Articles 8, 24, and 25 of the American Convention, in connection with Article 1(1) thereof.

On August 6, 2020, the Minister of Justice and Human Rights of the Nation instructed the areas involved in processing applications for the benefit provided in Law No. 24,043 to apply the new doctrine expressed by the National Treasury Prosecutor's Office in Opinion 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 Reparations Policy Management to determine whether the criteria currently in force would allow the petitioner's claim to be recognized as a situation of exile.

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

The State considers that Mrs. Silvia Mónica Severini was a victim of political persecution by the civil-military dictatorship that blighted the Argentine Republic between March 24, 1976, and December 10, 1983. In view of this, in line with opinion IF-2022-08499390-APN-SSPYEIDH#MJ of the National Secretariat of Human Rights and in compliance with its international human rights obligations, the Argentine State understands that the petitioner is entitled to adequate compensation for the violations she has suffered.

II. Measures to be adopted

1. The parties agree that pecuniary compensation will be granted in accordance with the scheme provided in Law No. 24,043, to which end the entire period during which Mrs. Silvia Mónica Severini remained in forced exile will be considered, in keeping with opinion IF-2022-08499390-APN-SSPYEIDH#MJ. That is, from January 11, 1977, 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 executive decree approving this agreement, a ministerial resolution will be issued granting the reparation benefit provided for in Law No. 24,043, without any additional costs or expenses. The amount of the reparation will be calculated at the date of issuance of said ministerial resolution.
3. The State also undertakes to comply with the term of Article 30 of the regulations on Chapter V of Law No. 25,344, as provided in Executive Decree No. 1116/2000.
4. Upon payment of the reparation provided for in section II.2 of this agreement, the petitioners permanently and irrevocably waive the right to bring any other financial claim against the State in relation to the facts that gave rise to this case.

III. Signature *ad referendum*

The parties agree that this agreement shall be approved by an executive decree.

The Government of the Argentine Republic and the petitioners welcome the signing of this agreement, express their full conformity with its content and scope, mutually appreciate the good will shown, and agree that once the executive decree 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 identical copies are signed in the Autonomous City of Buenos Aires, on the 23rd of February 2022

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

12. 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.⁴ 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.

⁴ 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. 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.

14. Pursuant to Clause III of the agreement, and in view of the State's confirmation of September 12, 2022, regarding the issuance of Executive Decree No. 591/2022 approving the FSA, as well as the petitioners' request of October 5, 2022, to move forward with its approval, it is appropriate at this time to assess compliance with the undertakings given in this instrument.

15. Regarding clause II.2, on the issuance of the ministerial resolution granting the reparation benefit provided for in Law No. 24,043, the Commission finds that on November 3, 2022, the State reported that on October 21, 2022, the Minister of Justice and Human Rights of the Nation issued resolution RESOL-2022-1594-APNMJ by which it resolved to grant Silvia Severini the benefit provided by Law No. 24,043, as well as establishing the days for which compensation was due and the appropriate compensation amount. This information was brought to the attention of the petitioners. Therefore, the Commission considers that clause II. 2 on the issuance of the ministerial resolution to give effect to the reparation in favor of Mrs. Severini, has been fully complied with, and so declares it.

16. In relation 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 so declares it. Therefore, the Commission considers that the level of compliance with the friendly settlement agreement is partial, and so declares it. In this regard, the Commission will continue to monitor the implementation of the FSA until it is fully complied with.

17. Finally, the Commission considers that the rest of the content of the agreement is of a declarative nature, for which reason it does not require its 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 friendly settlement agreement that the parties signed on February 23, 2002.

2. To declare clauses II.1 (payment of pecuniary reparation) and II.3 (term) of the friendly settlement agreement to be pending compliance, based on the analysis herein.

3. To declare clause II. 2 (issuance of ministerial resolution under Law No. 24,043) of the friendly settlement agreement to be fully complied with, based on the analysis herein.

4. To declare the friendly settlement agreement has a partial level compliance, based on the analysis herein.

5. To continue monitoring compliance with clauses II.1 (payment of pecuniary reparations) and II.3 (term) of the friendly settlement agreement, based on the analysis herein. To that end, to remind the Parties of their commitment to periodically inform the IACHR regarding compliance therewith.

6. To make the present 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 December 11, 2022. (Signed): Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice President; Margarete May Macaulay, Second Vice President; Esmeralda E. Arosemena de Troitiño; Joel Hernández García; Carlos Bernal Pulido and Roberta Clarke, members of the Commission.