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CASE 14.669
REPORT ON FRIENDLY SETTLEMENT

MARIANO BEJARANO
ARGENTINA

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DECEMBER 11, 2022

I. SUMMARY AND RELEVANT PROCEDURAL ASPECTS OF THE FRIENDLY SETTLEMENT PROCESS

1. On October 27, 2010, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition lodged by Mariano Bejarano through his legal representatives, 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"), due to the violation of the human rights established in Articles 8 (judicial guarantees), 24 (equality before the law), and 25 (judicial protection), in conjunction with Article 1 (obligation to respect) of the American Convention on Human Rights, (hereinafter "Convention", "American Convention" or "ACHR") to the detriment of Mariano Bejarano (hereinafter "alleged victim"), derived from rejections of the benefit granted under Law No. 24,043.

2. On September 7, 2021, the Commission issued Admissibility Report No. 190/21, in which it declared the petition admissible and its competence to hear the claim presented by the petitioner regarding the alleged violation of the rights of Articles 8 (judicial guarantees), 24 (equality before the law), and 25 (judicial protection) contained in the American Convention in relation to Article 1.1 of the same instrument.

3. On February 23, 2022, the parties entered into a friendly settlement agreement and on June 16, 2022, the IACHR notified the parties of the commencement of the FSP. On September 16, 2022, the State reported the issuance of Cabinet Decree No. 648/2022 approving the respective agreement and asked the Commission to issue the approval, as established in the FSA.

4. On September 22 and October 5, 2022, respectively, the State and the petitioning party requested the approval of the agreement.

5. 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 petitioning party and the 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

6. The petitioning party complains that Mariano Bejarano was forced to spend his childhood outside of Argentina due to acts of political persecution carried out by State agents against his father. It points out that the alleged victim filed a suit to request reparation for the forced exile, but it was denied because the competent court considered that he had not shown proof of the persecution giving rise to his exile.

7. It is alleged that Eduardo Horacio Bejarano, father of the alleged victim, was threatened by the "Triple A", a parapolice organization that had carried out numerous murders in the country; and that in 1976 a friend who worked in the government informed him that they were looking for him and had therefore advised him to leave the country immediately. The petitioning party indicates that for those reasons the family left the country in July 1976, and that the alleged victim's father died in Mexico in November 1983.

8. In 2004, the alleged victim requested, based on Law No. 24,043, economic reparation from the State for the forced exile he had undergone. It emphasizes that at that time other victims of forced exile had already been compensated under the aforementioned law, and that the Supreme Court of Justice of the Nation had already established criteria regarding such compensation. The petitioning party states that the Secretariat for Human Rights, the body responsible for applying the aforementioned law, considered it proven that the alleged victim had suffered forced exile. To that end, the Secretariat evaluated the evidence in the file, including certification by the United Nations High Commissioner for Refugees (UNHCR) that the alleged victim had been a refugee; as well as newspaper clippings, passports, and other items. In 2006, after the State had paid several compensations in favor of victims of forced exile, the Inspector General (*Procurador del Tesoro de la Nación*) ruled that economic compensation should not be paid on this account, since it was not contemplated in Law No. 24,043. The request for reparation filed by the alleged victim was denied for this reason.

9. The alleged victim filed a direct appeal before the Administrative Court of Appeals against the refusal to pay compensation. He argues that, since the State had already expressly recognized the claimant had been forced into exile, the issue before the court was strictly legal, i.e., whether Law No. 24,043 included exile as eligible for compensation. However, the court rejected the appeal on the grounds that the alleged victim had not provided evidence to prove the persecution giving rise to the exile, and that neither the accreditation of his refugee status, nor newspaper clippings or testimonies were sufficient for that purpose. The petitioning party argues that, according to international standards, it was incumbent upon the State to make available to the alleged victim the files needed to ascertain the truth about the acts of persecution. Although the State did not provide access to files, its practice had been to accept UNHCR certification as sufficient proof that individuals had left the country based on "well-founded fear". The petitioning party emphasizes that at no time did the State deny the facts, so that the judiciary had ruled *ultra petita* on a matter not subject to its jurisdiction; and that it thereby violated the bilateral nature of the proceedings and the guarantee of the right to a defense in court. It adds that both the sister and the mother of the alleged victim filed lawsuits for the same facts and with the same evidence, and as a result, their claims for compensation were granted by the same Court of Appeals, albeit through different chambers.

10. The decision of the Court of Appeals was challenged before the Supreme Court of Justice of the Nation by means of an extraordinary appeal, which was rejected because the writ did not comply with a requirement related to the number of lines per page. The petitioning party claims that the rejection of the appeal based on a mere formality violated the alleged victim's right of access to justice in a matter related to reparations for human rights violations. It adds that, in other cases, the Supreme Court of Justice of the Nation had accepted briefs with the same layout flaws that were invoked to reject the alleged victim's brief, including a brief submitted by his sister in response to an extraordinary appeal filed by the State against the decision that granted reparations.

11. It also considers that the alleged victim's right to equality was violated because he was denied the reparation that was granted to his sister and mother for the same facts, and because a remedy was rejected even though others with the same defect were admitted in the case of his sister and several other persons. It adds that the decision declaring that the alleged victim's appeal had been improperly granted was notified on April 27, 2010, and that it constituted the final ruling under the domestic jurisdiction.

III. FRIENDLY SETTLEMENT

12. On February 23, 2022, the parties signed a friendly settlement agreement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case 14.669 of the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Dr. Elena Carmen Moreno and Dr. Myriam Carsen, as counsel for the petitioner, Mariano Bejarano, and the Argentine Republic, as State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting under the express mandate of Article 99 (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, have the honor to inform the IACHR that they have reached a friendly settlement agreement in the case, the contents of which are set forth below.

I. Background

On October 27, 2010, Mariano Bejarano filed a petition before the Inter-American Commission for violation of Articles 8 (judicial guarantees), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1) of the same instrument.

In its complaint, the petitioning party states that Mariano Bejarano was forced to live his childhood outside of Argentina due to the political persecution his father suffered at the hands of State agents.

Among other issues, it alleges that Mariano's father, Eduardo Horacio Bejarano, was a journalist, rural teacher, musician, and poet and that his musical repertoire was always linked to political protests and social demands.

It indicates that in 1975 he had been threatened by the "Triple A" and that, in 1976, the former Governor of the Province of Neuquén informed him that he was on a list of people who were being sought by State agents. According to the alleged victim, for those reasons, the family group left the country in July 1976.

Based on the above, Mr. Bejarano filed a request to be granted the benefit regulated by Law No. 24.043, which was rejected in administrative and judicial proceedings.

The IACHR received the original petition on April 10, 2017.

On September 7, 2021, the Commission adopted Admissibility Report No. 190/21. On that occasion, the Commission declared the complaint admissible regarding possible violations of the rights enshrined in Articles 8, 24, and 25 of the American Convention in conjunction with Articles 1.1 and 2 of that same instrument.

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 in the Inspector General's Opinion No. IF-2020-36200344-APN-PTN. In view of this, after the notification of the aforementioned Report, 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 petitioner's claim to be recognized as a situation of exile.

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

The State considers that Mr. Mariano Bejarano was a victim of political persecution by the civil-military dictatorship that devastated the Argentine Republic between March 24, 1976 and December 10, 1983. In view of this situation, and in line with Opinion IF-2022-11155626-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 has the right to be adequately compensated for the violations he suffered.

II. Measures to be adopted

1. The parties agree that pecuniary reparation will be granted in accordance with Law No. 24.043, considering for this purpose the entire period during which Mr. Mariano Bejarano remained in forced exile, according to Opinion IF-2022-1115626-APN-DNAJIMDDHH#MJ. That is, from August 2, 1976 to October 28, 1983.

2. The Argentine State undertakes that, within three (3) months as of the publication in the Official Gazette of the Argentine Republic of the Decree of the National Executive Branch approving this agreement, it will issue the following ministerial resolution granting the reparation benefit provided for in Law No. 24.043, without additional costs or expenses. The amount of the reparation will be calculated as of the date of the issuance of the aforementioned ministerial resolution.

3. The State also undertakes to comply with the deadline established in Article 30 of the enabling regulations to Chapter V of Law No. 25.344, provided for in Executive Decree No. 1116/2000.

4. Once the petitioning party submits to the National Administration of Social Security (ANSES) a true copy of the alleged victim's national identity document and the correctly completed form (PS.6.298) requesting the benefit provided for in Law No. 26.913, 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 petitioning party definitively and irrevocably waives the right to initiate any other pecuniary claim against the State in relation 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 petitioning party welcome the signing of this agreement, express 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 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 point the agreement will acquire full legal force.

Three identical copies were signed in the Autonomous City of Buenos Aires, on February 23, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. 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.

14. The Inter-American Commission has closely monitored the progress of the friendly settlement reached in the instant case and appreciates the efforts made by both parties during negotiations to reach this friendly settlement agreement, which is compatible with the object and purpose of the Convention.

15. As established in clause III of the agreement, and in view of the State's confirmation on September 16, 2022, regarding the issuance of Cabinet Decree No. 648/2022 of the National Executive Branch approving the FSA, as well as the request of the petitioning party of October 5, 2022, to move forward with its approval, it is appropriate at this time to assess compliance with the commitments established in this instrument.

16. In relation to clause II.2, regarding the issuance of the ministerial resolution granting the reparation benefit provided for in Law No. 24,043, the Commission notes 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 ESOL-2022-1593-APN-MJ, granting Mariano Bejarano the benefit provided for in 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 clause II. 2 on the issuance of the Ministerial resolution to enforce the reparation in favor of Mr. Bejarano, has been fully complied with and so declares it.

17. On the other hand, in relation 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, and hereby declares, that are pending compliance. Therefore, the Commission considers, and hereby declares, that the friendly settlement agreement has been partially complied with. In this regard, the Commission will continue to monitor the implementation of the FSA until it is fully complied with.

18. Finally, the Commission considers that the rest of the content of the agreement is of a declarative nature and therefore does not fall under 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, 2022.

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.*

2. To declare that compliance is still pending with respect 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, according to the analysis contained in this report.

3. To declare full compliance with clause II. 2 of the friendly settlement agreement (issuance of ministerial resolution of Law No. 24.043), according to the analysis contained in this report.

4. To declare that the friendly settlement agreement has been partially complied with 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, according to the analysis contained in this report. To that end, to remind the parties of their commitment to keep the IACHR regularly informed regarding compliance with this agreement.

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; Margarette May Macaulay, Second Vice President; Esmeralda E. Arosemena de Troitiño; Joel Hernández García; Carlos Bernal Pulido and Roberta Clarke, members of the Commission.