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CASE 14.771
REPORT ON FRIENDLY SETTLEMENT

LILIA ETCHEVERRY
ARGENTINA

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LILIA ETCHEVERRY
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NOVEMBER 30, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On September 28, 2011, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Lilia Etcheverry (hereinafter "alleged victim"), with the legal representation of Myriam Carsen (hereinafter "the petitioner"), alleging the international responsibility of the Argentine Republic (hereinafter, "Argentina" or "the State"), for the violation of the human rights enshrined in Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection), of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention"), in relation to Article 1. 1 (obligation to respect rights) of the same instrument, to the detriment of Lilia Etcheverry, derived from the violations to due process and the rejection of her request for economic reparation, as a result of her forced exile, filed within the framework of Law No. 24.043.

2. On November 4, 2021, the Commission issued its Report on Admissibility No. 303/21, in which it declared the petition admissible and declared its competence to hear the claim presented by the petitioners regarding the alleged violation of the rights enshrined in Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention in relation to the obligation established in Article 1(1) of the same instrument, to the detriment of Lilia Etcheverry.

3. On September 29, 2022, the parties initiated a friendly settlement process with the facilitation of the Commission, which materialized with the signature of a friendly settlement agreement (hereinafter "FSA") on November 14, 2022. On September 7, 2023, the State informed the issuance of Decree No. 470/2023 of September 6, 2023 of the National Executive Branch approving the respective agreement and requested the approval and publication of the agreement. In turn, on September 15, 2023, the petitioner requested the corresponding homologation to the Commission, as established in the FSA.

4. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40(5) of the Rules of Procedure of the Commission, contains a summary of the facts alleged by the petitioners and transcribes the friendly settlement agreement signed on November 14, 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 to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioner denounced the lack of reparation to Mrs. Lilia Etcheverry for the damages caused to her and her family by the persecution she claims to have suffered during the 1970s, and the consequent forced exile; as well as the denial of justice for violation of judicial guarantees, judicial protection and equality and non-discrimination in the framework of the civil proceedings based on Law No. 24.043.

6. The petitioner stated that Mrs. Lilia Etcheverry was a child when, on the night of November 29, 1976, a group of between ten and fifteen heavily armed persons entered her home, some of them dressed in military uniforms while others were in civilian clothes. Lilia Etcheverry lived with her mother, two brothers, her mother's partner and Federico Lüdden. The invaders stayed in her home for approximately five hours during which time they threatened people, including children; destroyed furniture and property; raised the floors of the house and subjected Federico Lüdden to torture. At dawn, Federico Lüdden was taken to an unknown destination and remains missing to this day. Mrs. Lilia's mother was released on the grounds that she

had children, but was ordered to disappear. The family group then took refuge first in the homes of different relatives, until they left Argentina. Already residing in Brazil, on June 19, 1978, the family group was recognized as refugees by the United Nations High Commissioner for Refugees. Later, Lilia and her family were resettled in Sweden, where they arrived on October 27, 1978.

7. In view of the above, on November 29, 2004, Mrs. Etcheverry requested to be included in the reparation policies carried out by the Argentine Republic within the framework of Law 24.043, on the grounds that the deprivation of her right to remain in her country of origin constituted an impairment of her liberty comparable to the cases provided for in the aforementioned legal body. Said petition was processed under number 146568/04, and was rejected by resolution issued by the Ministry of Justice and Human Rights under the National Executive Branch (Resolution No. 904/08, of April 17, 2008); for which reason she then filed the direct appeal provided for in section 3 of Law 24.043. 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.

8. The petitioner informed that the aforementioned interpretation is allegedly contradictory to the decisions adopted in many other cases. The petitioner also informed that, however, the appeal filed against the aforementioned resolution was also rejected on November 30, 2009. The rejection by Chamber III of the National Chamber of Appeals for Federal Administrative Litigation was based on the fact that the alleged situation of exile had not been demonstrated. As a result, on November 22, 2009, an extraordinary federal appeal was filed, which was denied by the Chamber, which led to the complaint appeal of March 30, 2010. After examining such appeal, the Supreme Court of Justice of the Nation dismissed it on the grounds that the complaint did not comply with the requirements of Agreement No. 4/2007. After examining the copies of documents submitted by the petitioner, the IACHR has identified that the decision was made on March 2, 2011 and notified on March 31, 2011.

III. FRIENDLY SETTLEMENT

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

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case No. 14.771 of the registry 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 Lilia Etcheverry, and the Argentine Republic, in its capacity as State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting under the express mandate of Article 99 section 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 Human Rights Secretariat, 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 set forth below.

I. Background

On September 28, 2011, Lilia Etcheverry filed a petition with the Inter-American Commission for violation of Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention in relation to Article 1(1) of the same instrument.

In the complaint, she stated that, during the last civil-military dictatorship, in order to safeguard her life, she had to go into exile together with her family group, first in Brazil and then in Sweden.

By virtue of these facts, she filed a 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 August 1, 2018, the IACHR notified the petition to the Argentine State.

On November 4, 2021, the Commission approved its Report on Admissibility No. 303/21. 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 of the 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 to apply the new doctrine set forth by the Office of the Attorney General of the Treasury of the Nation 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 Reparation 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 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 Mrs. Lilia Etcheverry 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, in line with opinion IF-2022-82029599-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 will be granted in accordance with the scheme provided for by Law No. 24.043, considering for this purpose the entire period during which Mrs. Lilia Etcheverry remained in forced exile, according to ruling IF-2022-82029599-APN-DNAJIMDDHH#MJ. That is, from June 19, 1978 to December 10, 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 will 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. 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.
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 connection with the facts that gave rise to this case.

III. Signature *ad referendum*

The parties state 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 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 content are 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.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.

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 September 7, 2023 regarding the issuance of Decree No. 470/2023 of the National Executive Branch approving the FSA on September 6, 2023, as well as the request of the petitioning party dated September 15, 2023 to move forward with its homologation, it is appropriate at this time to assess compliance with the commitments established in this instrument.

13. With regard to clauses II.1 (payment of pecuniary reparation), II.2 (resolution under Law 24,043) and II.3 (term) of the friendly settlement agreement, the Commission considers that they are pending compliance and so declares. Therefore, the Commission considers that the friendly settlement agreement is pending compliance and so declares. In this regard, the Commission will continue to monitor the implementation of the FSA until full compliance.

14. Finally, the Commission considers that the rest of the content of the agreement is of a declaratory 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

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.*

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 compliance to be pending with regard to clauses II.1 (payment of pecuniary reparation), II.2 (resolution under Law 24.043), II.3 (term) of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare that the friendly settlement agreement is pending compliance, according to the analysis contained in this report.
4. To continue to monitor compliance with clauses II.1 (payment of pecuniary reparation), II.2 (resolution under Law 24.043), II.3 (term) 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.
5. 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 30th day of the month of November, 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.