

OEA/Ser.L/V/II.161
Doc. 43
21 March 2017
Original: English

REPORT No. 36/17
CASE 12.854
FRIENDLY SETTLEMENT REPORT

RICARDO JAVIER KAPLUN AND FAMILY
ARGENTINA

Approved by the Commission at its session No. 2079 held on March 21, 2017.
161st regular period of sessions.

Cite as: IACHR, Report No. 36/17, Case 12.854. Friendly Settlement. Ricardo Javier Kaplun and Family. Argentina. March 21, 2017.

REPORT No. 36/17
CASE 12.854
FRIENDLY SETTLEMENT REPORT
RICARDO JAVIER KAPLUN AND FAMILY
ARGENTINA
MARCH 21, 2017

I. SUMMARY

1. On September 30, 2002, the Inter-American Commission on Human Rights (hereinafter the Commission or IACHR) received a petition filed by Juan María Kaplun, Oscar Patricio Kaplun, Diego Ernesto Kaplun, Cora Elizabeth Kaplun, Guillermo Gabriel Kaplun, Moira Viviana Kaplun, Pablo Gustavo Kaplun, and the Committee of the Relatives of Defenseless Victims of Social Violence (*Comisión de Familiares de Víctimas Indefensas de la Violencia Social*) (hereinafter COFAVI, and, as a whole, the petitioners), where they alleged the international responsibility of the Republic of Argentina (hereinafter Argentina or the state) for the injuries inflicted upon Mr. Ricardo Javier Kaplun (the alleged victim), presumably by police officers in the context of an arbitrary detention, which had led to his death, as well as for the absence of any effective investigation that would have brought to trial those responsible for the incident and punished them. The petitioners alleged that the State was responsible for the violation of the rights enshrined in Article 4 (right to life), Article 5 (right to humane treatment), Article 8 (right to a fair trial), and Article 25 (judicial protection) in connection with the obligation to respect and guarantee the rights enshrined in Article 1.1 of the American Convention on Human Rights (hereinafter the American Convention).

2. The parties started to look for a friendly settlement in November 2012 and made progress in the negotiations, with the Commission's facilitation, and reached an agreement on November 10, 2015.

3. In the present friendly settlement report, in accordance with the provisions in Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, a report with a brief summary of facts alleged by the petitioners was drawn up and the friendly settlement agreement, signed on November 10, 2012 by the petitioners and the representatives of the state of Argentina, was transcribed. Likewise, the agreement signed by the parties was adopted, and it was agreed to publish the present report in the Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On September 30, 2002, the IACHR received a petition which was notified to the State of Argentina on July 31, 2007.

5. On March 19, 2012, the IACHR issued Admissibility Report No. 4/12, where it found that the case was admissible for the purpose of examining the alleged violation of the rights of the alleged victim and his next of kin as enshrined in Article 4 (right to life), Article 5 (right to human treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), and Article 25 (judicial protection). In the same report, the IACHR made itself available to the parties to start a friendly settlement process.

6. The petitioners submitted additional information during the proceedings of the petition on the following dates: May 5 and 14, 2012; January 8, March 13 and 28, and September 23, 2013; September 23, 2014; July 10 and 14, and November 11 and 17, 2015; March 3 and 4, October 20, and November 29, 2016; and January 17, 2017. This additional information was transmitted to the state.

7. The state submitted additional information during the proceedings of the petition on the following dates: October 26 and November 21, 2012; October 28, 2014; June 10, September 9, and November 7, 2016; and January 9, 2017. This additional information was transmitted to the petitioners.

8. On May 14, 2012, the petitioners accepted the IACHR's proposal to facilitate a friendly settlement process. On November 21, 2012, the state voiced its interest in starting a friendly settlement procedure.

9. The IACHR paid several visits to Argentina and held meetings with the parties in the country on two occasions, May 8, 2014 and August 27, 2015, which were chaired by Commissioner Paulo Vannuchi, IACHR Rapporteur for the country.

10. On November 10, 2015, the parties signed a Friendly Settlement Agreement (FSA) in Buenos Aires, Argentina.

11. On January 9, 2017, the state reported approval and publication of Decree No. 1338 of December 29, 2016, whereby the President of the Republic of Argentina approved the friendly settlement agreement signed by the parties on November 10, 2015.

12. On January 17, 2017, the petitioner requested the IACHR to adopt the friendly settlement agreement for the purpose of its implementation.

III. FACTS ALLEGED

13. The petitioners alleged that the State of Argentina bears international responsibility for the deprivation of life of Ricardo Javier Kaplun, as a result of the various injuries inflicted on him by police officers while he was detained, as well as for the absence of any investigation of the incidents.

14. The petitioners alleged that, in the early morning of November 28, 2000, Ricardo Javier Kaplun and Alejandro Marcelo Alliano had an argument with their neighbors, who then chased them home, along with police officer Jorge Renato Gaumudi, where they allegedly started to hit him. According to the petitioners, Juan María Kaplun, the victim's brother, reported the incidents by phone to police officers located at Police Station No. 31 of the Argentina's Federal Police Force. They also alleged that three police officers, namely, Paula Mariana Ronsoni Rossi, Diego Javier García, and Assistant Inspector Julio Alberto Soldani, reached the site of the incidents, where the latter rendered the victim powerless and handcuffed him. They asserted that the victim had requested the Assistant Inspector to take him to a hospital because of the intense pain he felt to his back.

15. The petitioners alleged that, on November 28, 2000, the admission of "NN" to Police Station No. 31 had been recorded on the ledger of the duty officer, and that said record pertained to the admission into custody of Ricardo Javier Kaplun, 45 years old at that time. The above was subsequently confirmed by Dr. María del Rosario Josefina De Dominicis, who belonged to the Emergency Medical Care Service and had asserted that she had examined the victim, registered as "NN," at the Police Station and that he had a blunt-force cut wound and an abrasion in the left lower back, and he was vomiting, which led her to recommend his transfer to a hospital. As alleged by the petitioners, Ricardo Javier Kaplun was admitted with the identification "NN" to the Dr. I Pirovano Hospital of the city of Buenos Aires, accompanied by police officer María Alejandra Miño, where he had a cardiopulmonary arrest and died at about 4:30 in the morning on November 28, 2000.

16. As for the criminal investigation, the petitioners alleged that National Criminal Investigation Court No. 40 opened an investigation for "death from questionable causes." On March 27, 2002, the same court dismissed the criminal case regarding the neighbors of the alleged victim and police officer Gaumudi. Nevertheless, it had ordered that a criminal investigation be launched with respect to the police officers who were at the police station at the time of the incidents, as presumed co-perpetrators of the crime of "failing to perform their duties as civil servants."

17. The petitioners alleged that the dismissal was not appealed by the Office of the Attorney General of the Nation (*Ministerio Público de la Nación*), although this had been requested by the complainant. Because of the above, they had filed an appeal against the above-mentioned ruling, which had been turned down for failing to meet stipulated time-limits. The police officers had also filed an appeal with the National Appeals Chamber, which upheld, on October 3, 2002, its proceedings but ordered the establishment of a medical board to determine the causes that led to the victim's death. On February 3, 2003, National Criminal Investigation Court No. 40 had ordered setting up the board and looking for new expert evidence, as well as investigating whether or not the treatment provided by the medical staff from the moment the victim arrived at Police Station No. 31 until he died was adequate.

18. According to the allegations made by the petitioners, on March 31, 2005, National Criminal Investigation Court No. 40 dismissed the case regarding the medical staff and referred the case file to Correctional Court No. 14 so that it would hear the case of the crime of failing to perform the duties of a civil servant that the three police officers were charged with and complied with the orders given by the National Appeals Chamber on the basis of an expert report that concluded that it was unable to determine if the victim's death was due to a trauma or not. COFAVI filed a complaint with Chamber III of the National Criminal Cassation Court, which ruled on February 6, 2007 that the criminal investigation had to more in-depth because it was incomplete.

19. The petitioners alleged that, on December 19, 2008, National Criminal Investigation Court No. 40 tried police officers Julio Soldani, Diego García, Paula Mariana Ronsoni Rossi, and María Alejandra Miño for the crime of "culpable bodily harm." In response to this ruling, the complainant filed an appeal and subsequently an appeal for annulment (*casación*), which ruled against the complainant. Likewise, they filed a complaint with Chamber III of the Criminal Cassation Court, which was turned down; and they filed, on March 3, 2010, a special appeal so that the legal specification of the charge of "culpable bodily harm" would be amended because there was evidence indicating that the injuries were inflicted by police officers while the victim was detained.

20. The petitioners stated that court authorities systematically turned down their requests for evidence or to open up the lines of investigations submitted by the complainants and stated that the entire impetus behind the proceedings over the years had been given exclusively by the complainant and not by the Attorney General's Office. They alleged various irregularities in connection with the absence of impartiality and autonomy of the court authorities in the criminal case. They also reported that, from the start of the criminal investigation until at least 2006, National Criminal Investigation Court No. 40 came to a standstill because of the illness and subsequent death of the presiding judge. Another irregularity that was pointed out by the petitioners was that, without justification, the prosecutor in charge of the case, after a few interventions, removed himself from the case voluntarily in November 2007 because the Kaplun family was questioning his work. The petitioners reported that, on October 10, 2008, the Prosecutor General of the Nation (*Procurador General de la Nación*) issued Resolution No. 85/08 ordering that an investigation be opened for the purpose of clarifying the prosecutor's responsibility, and they stated that he acknowledged there were certain irregularities.

21. According to what was alleged by the petitioners, National Criminal Investigation Court No. 40 intervened in Correctional Court No. 14 for the purpose of having it continue the investigation on the crime of a civil servant's failure to perform his or her duties, without detriment to continuing other criminal investigations. The petitioners pointed out that Correctional Court No. 14 sentenced two of the three police officers, Eduardo David Beragua and Jorge E. Soria Puig, to pay a fine and disqualified them from employment. On February 3, 2010, the National Criminal Cassation Court acquitted them, in view of which the complainant filed a special appeal on February 19, 2010. In that respect, the petitioners considered that, 10 years after the incidents, the circumstances of the death of Ricardo Javier Kaplun had not been clarified.

IV. FRIENDLY SETTLEMENT

22. On November 10, 2015, the petitioners represented by Ana Maria Herren and the Committee of Relatives of Defenseless Victims of Social and Institutional Violence (COFAVI), chaired by Mabel Edhit Yapur, signed a friendly settlement agreement with the State of Argentina, represented by Luis Hipólito Alén, Under-Secretary for the Protection of Human Rights of the Ministry of Justice, and Javier Salgado, Human Rights Director of International Litigation (*Contencioso Internacional*) of the Ministry of Foreign Affairs and Religion, on the basis of the following terms:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case 12.854, Ricardo Javier Kaplun, from the Registry of the Inter-American Commission on Human Rights, Juan Maria Kaplun Carmody, Oscar Patricio Kaplun, Diego Ernesto Kaplun, Cora Elizabeth Kaplun, Guillermo Gabriel Kaplun, Moira Viviana Kaplun, Pablo Gustavo Kaplun, and the Committee of Relatives of Defenseless Victims of Social and Institutional Violence [*Comité de Familiares de Víctimas de la Violencia Social e Institucional – COFAVI-*], represented on this occasion by its Chair, Dr. Mabel Edhit Yapur, with the legal counsel of Ana Maria Herren, for the petitioners, and the Government of the Republic of Argentina as a state party to the American Convention on Human Rights, hereinafter referred to as the Convention, acting on the basis of the express mandate given to it by Article 99, subparagraph 11, and Article 126 of the Constitution of the Nation of Argentina, and on the basis of the provisions of Article 28 of the Convention, represented by the Under-Secretary for the Protection of Human Rights of the Ministry of Justice, Dr. Luis Hipólito Alén, and the Human Rights Director of International Litigation of the Ministry of Foreign Affairs and Religion, Dr. Javier Salgado, are honored to inform the illustrious Inter-American Commission on Human Rights that they have reached a friendly settlement agreement with respect to the petition, whose contents are set forth below, and they request that, on the basis of the consensus that was reached, this agreement be accepted and that, when the Decree of the National Executive Branch approving the present agreement is issued, the report be adopted as provided for by Article 49 of the Convention.

International responsibility of the State of Argentina

After having examined the petition filed by the next of kin of Ricardo Javier Kaplun and the Committee of Relatives of Defenseless Victims of Social Violence (COFAVI) in the light of the files appearing in the relevant judiciary proceedings, the review of admissibility carried out by the Inter-American Commission on Human Rights in Report No. 4/12, the results of the working meetings held between the parties during the friendly settlement process, and taking into account the principle of presumption enshrined in Article 38 of the Rules of Procedure of the Inter-American Convention on Human Rights, the State of Argentina has taken the decision to accept international responsibility for the incidents reported in Case No. 12.854 on the basis of the terms of the above-mentioned report, for violation of Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), and Article 25 (judicial protection) of the Convention on Human Rights.

In particular, in conformity with the above-mentioned principle of presumption, the State of Argentina believes there are enough reasons to establish this international responsibility since, on the basis of the documents indicated in the preceding paragraph, it emerges that it has not been possible to dismiss that Ricardo Javier Kaplun had been the target of an arbitrary detention or that the police officers of the Argentine Federal Police Force had somehow been involved in his death—which took place when he was in their custody—as set forth in the above-mentioned Report No. 4/12.

Likewise, the State of Argentina understands that the review of court proceedings makes it possible to conclude that the investigation of the facts was not compatible with enforceable international standards, because of which confirmation of the violation to the detriment of the petitioners has been established in connection with Article 5 (right to humane treatment), Article 8 (right to a fair trial), and Article 25 (judicial protection).

In response to the above and after the present agreement becomes legally effective as a result of its approval by a Decree from the National Executive Branch and the Inter-American Commission on Human Rights as a result of adoption of the report stipulated in Article 49 of the Inter-American Convention on Human Rights, the State of Argentina pledges to adopt the following measures of reparation.

I. Measures of pecuniary reparation

1. The parties agree to establish an *ad hoc* arbitration court that would calculate the amount of pecuniary reparations owed to the petitioners, in conformity with the rights whose violation has been recognized and in line with the international standards that are applicable.
2. The court shall be comprised of three independent experts, recognized for their expertise in human rights and their high ethical qualities, one designated by the petitioners, the second designated by the national state, and the third designated by the two experts chosen by the parties.
3. In order to set up the arbitration court, the parties shall remit to the other party the *curriculum vitae* of the arbitrator proposed so that it can voice any objections it deems relevant in line with the requirements stipulated in item I.2 of the present agreement.
4. As long as the parties have not made any objections to the arbitrators proposed respectively, the court must be established within 30 days, at the latest, following the adoption of the report as required by Article 49 of the American Convention on Human Rights.
5. The procedure to be applied by the arbitration court shall be defined by mutual agreement between the parties.
6. The judgment of the arbitration court shall be final and without appeal. It should indicate the amount and modality for the pecuniary reparations agreed upon and the beneficiaries of these reparations, which must be submitted to evaluation by the Inter-American Commission on Human Rights in the framework of the process of monitoring compliance with the agreement, for the purpose of checking that it is in line with applicable international parameters.
7. The pecuniary reparations set in the arbitration ruling shall be effectively provided within the time-limits and in accordance with the modalities that the court decides, in keeping with the criteria set forth in the jurisprudence of the Inter-American Court of Human Rights.
8. The petitioners definitively and irrevocably waive their right to file any other claim of a pecuniary nature against the national state in connection with the present case.

II. Non-pecuniary reparation measures

A. The parties agree to set up a commission comprised of a representative for the petitioner and another for the state, which would report on the performance of the duties pertaining to civil servants of the police force, judiciary system, and Office of the Attorney General (*Ministerio Público Fiscal*) in connection with the incidents referred to in the case and arising from the administrative and/or judiciary case files. The costs required for the operation of the above-mentioned commission shall be paid by the Government of the Republic of Argentina, which shall also provide the physical premises, materials, and equipment needed to carry out the task entrusted to it. The work of this commission shall be submitted to the Ministry of Security of the Nation, for a possible review of the administrative records and activities that pertained to the police officers involved, as well as the Council of the Judiciary, the Public Prosecution Service of the Nation (*Procuración General de la Nación*), the Government of the City of Buenos Aires, the Government of the Province of Buenos Aires, and the Supreme Court of Justice of the Nation, as relevant, so that they can adopt the relevant measures in accordance with their respective responsibilities.

The National Arms Registry (*Registro Nacional de Armas—RENAR*) can also eventually be notified about the above-mentioned conclusions, which shall also be published on the website of the Ministry of Justice and Human Rights for a period of 14 months.

B. The national state shall install a commemorative plaque in the police station where Ricardo Javier Kaplun was detained, and this plaque shall indicate the facts of the case and acknowledgment of international responsibility. The contents of the plaque shall be mutually agreed upon by the parties.

C. The national state shall pay for the expenses and costs calculated for the judicial proceedings referring to the death of Ricardo Javier Kaplun where the petitioners filing with the IACHR were legitimately recognized as complainants and/or whistleblowers.

III. Measures for non-repetition

1. The Government of the Republic of Argentina pledges to provide more in-depth training activities to officers, non-commissioned officers, and cadets of the Federal Security Forces and also for medical and nursing staff who perform their duties in said institutions, which would focus on fulfilling obligations that have been accepted internationally, regarding the rules for the use of force by the police, especially the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted at the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, as well as rules for the treatment of prisoners and principles for the protection of all persons under any form of detention or imprisonment.

The above-mentioned training programs shall be developed by the Ministry of Security of the Nation or the supreme political authority in charge of the managing the National Homeland Security System, with the intervention of the areas having jurisdiction over training and human rights. Human rights training courses shall also be given to the members of the Medical-Forensic Board of the Supreme Court of Justice of the Nation.

2. The Government of the Republic of Argentina pledges to promote, within 12 months after this agreement has been validated by the IACHR, regulatory amendments with the authorities having jurisdiction over the following initiatives:

Security matters:

The national state, through the Ministry of Security of the Nation, pledges to:

- Make progress in drawing up a draft bill of law for regulating and implementing a comprehensive external audit, with the authority to receive whistleblowing reports and investigate possible breaches of the disciplinary system currently in force by members of the Federal Security Forces and promote the corresponding administrative penalties depending on the case.

- Adapt detention areas allocated in the police stations for the provisional accommodation of detainees, while they wait to be transferred to a court or wait to be definitively released, so that they meet international standards in that area, with the installation of closed-circuit video surveillance in the areas for internal security and access to the jail cells and the gradual removal of those facilities that cannot meet the required conditions for the provisional accommodation of detainees.

- Promote reforms that ensure that no institutional legal patronage is afforded to the staff of the Federal Security Forces against whom charges have been brought in court for severe human rights violations.

IV. Other measures

By virtue of the current status of the cases that were processed in the judicial branch of government, the National Government pledges to request the opinion of the Office of the Attorney General (*Ministerio Público Fiscal*) so that this institution will indicate whether or not it is possible to re-open the investigation and conduct a timely trial of the police officers and other civil servants implicated in the present case.

In the event it is feasible to re-open the proceeding(s), the state, by means of the corresponding body, pledges to promote the investigation and timely punishment of the perpetrators, participants, and accessories of the death of Ricardo Javier Kaplun.

V. Publicity

The Government of the Republic of Argentina pledges to publicize the present agreement in two national dailies chosen to the satisfaction of the petitioners.

VI. Petition

The Government of the Republic of Argentina and the petitioners hereby sign the present agreement, state their full conformity with its contents and scope, and mutually value the good will that was evident during its negotiation. In that regard, it is hereby noted that the present agreement must be finalized when it is approved by a Decree by the National Executive Branch, on which occasion the Inter-American Commission on Human Rights shall be requested to ratify the friendly settlement agreement achieved by means of the adoption of the report stipulated in Article 49 of the American Convention on Human Rights.

Buenos Aires, November 10, 2015.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

23. The IACHR reiterates that, according to Article 48.1.f and Article 49 of the Convention, this procedure is aimed at “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Acceptance to carry out these proceedings highlights the state’s good faith in achieving the purposes and goals of the Convention by virtue of the principle *pacta sunt servanda*, whereby states must fulfill in good faith the obligations they have accepted in treaties.¹ It also wishes to reiterate that the friendly settlement procedure as envisaged in the Convention makes it possible to conclude individual cases without litigation and it has shown, in cases in various countries, that it provides an important vehicle for settlement, which can be used by both parties.

24. The Inter-American Commission has closely followed the development of the friendly settlement achieved in the present case and greatly appreciates the efforts made by both parties during the negotiations for the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

25. The IACHR observes that the President of the Nation of Argentina issued Decree No. 1338 of December 29, 2016, whereby the Friendly Settlement Agreement signed on November 10, 2015 by the petitioners and the Government of the Republic of Argentina was approved, a copy of which is included in the case file.

26. According to what was provided for in the friendly settlement agreement, once the agreement is finalized with approval by the Decree issued by the National Executive Branch, the state would request the IACHR to ratify it by its adoption of the friendly settlement report. In that respect, on January 9, 2017, the IACHR received a communication from the State of Argentina requesting the Commission to adopt the report as envisaged in Article 49 of the American Convention so as to begin the proceedings to grant the victims the reparation measures set forth in item III of the Friendly Settlement Agreement. On January 24, 2017, the petitioner requested the issuance of the report adopting the friendly settlement agreement.

27. The Inter-American Commission highlights as a positive measure the State of Argentina’s acknowledgment of its international responsibility, as enshrined in the friendly settlement agreement, for violation of the rights of the American Convention on Human Rights in connection with the facts set forth in the petition.

28. The IACHR has considered that friendly settlement agreements can include a plurality of measures that constitute basic elements for comprehensive reparation, such as financial compensation measures, whereby the alleged victims of human rights violations and/or their next of kin have received monetary payment as reparation for the impacts sustained as a result of the violations; measures of satisfaction, such as public acknowledgment of the state’s responsibility, public presentation of apologies and atonement, among others; measures for the investigation, the trial, and criminal or disciplinary sanctions for those who violated human rights; measures of restitution, such as the release of persons who have been deprived of their liberty, reinstatement of their jobs, among others; and measures of non-repetition, such as amendments to laws and regulations, adoption of public policies, training for state agents, and inclusion of the contents of the petition and/or case in human rights education programs.

29. Regarding this, in view of the friendly settlement agreement achieved between the parties, the IACHR highlights the other reparation measures provided for in the friendly settlement agreement, including financial reparation measures, the state’s commitment to investigate the facts, as well as measures involving training for civil servants and adapting detention areas.

¹ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article: “**Pacta sunt servanda**”. *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

30. By virtue of the above, the IACHR considers that these commitments are in the process of being fulfilled, as a result of which it will continue to monitor this process.

VI. CONCLUSIONS

31. On the basis of the considerations indicated above and by virtue of the procedure provided for in Article 48.1.f and Article 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction at achieving a friendly settlement in the present case, based on respect for human rights and in keeping with the object and purpose of the American Convention.

32. By virtue of the considerations and conclusions set forth in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To adopt the terms of the agreement signed by the parties on November 10, 2015.
2. To continue monitoring compliance with the commitments made by the State of Argentina on the basis of the agreement adopted in the present report. For this purpose, to remind the parties of their commitment to periodically report to the IACHR about their compliance.
3. To publish the present report and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of the month of March, 2017. (Signed): Francisco José Eguiguren Praeli, President; Margarette May Macaulay, First Vice-President; Esmeralda Arosemena de Troitiño, Second Vice-President; José de Jesús Orozco Henríquez, Paulo Vannuchi and James L. Cavallaro, Commissioners.