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Title/Style of Cause: Juan Angel Greco v. Argentina
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 22 October 2003
Citation: Greco v. Argentina, Petition 11.804, Inter-Am. C.H.R., Report No. 91/03,
OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANT: the Center for Legal and Social Studies
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I. SUMMARY

1. On September 10, 1997, Mrs. Zulma Bastianini de Greco presented a petition before the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission” or “IACHR”) concerning the death of her son, Juan Ángel Greco. As from April of 2001, the Center for Legal and Social Studies (Centro de Estudios Legales y Sociales “CELS”) has acted as co-petitioner with Mrs. Bastianini. The petitioners maintain that the Republic of Argentina (hereinafter “State” or “Argentina”) bears responsibility for violations of Articles 1(1), 4(1), 5, 7, 8 and 25 of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”) as a result of the illegal detention, mistreatment and subsequent death in custody of Juan Ángel Greco.

2. In summary, the petitioners contend that, on June 25, 1990, Mr. Greco, an artisan then 24 years of age, was illegally detained and mistreated while trying to seek police assistance to denounce an assault. They indicate that, while Mr. Greco was detained in the Comisaría of Puerto de Vilelas, Province of Chaco, a fire broke out in his cell under unexplained circumstances, causing the victim to sustain severe burns. The petitioners allege police responsibility in the setting of the fire, and in delaying the transfer of the victim to the hospital for a period of hours. Mr. Greco remained hospitalized until his death on July 4, 1990. The petitioners further allege that the State failed to carry out an adequate investigation to clarify the facts alleged, thereby denying the family their right to justice and to seek compensation.

3. On October 17, 2003, in the course of a working meeting held during the 118^o regular period of sessions of the IACHR, the State and the petitioners signed a friendly settlement agreement. Among the commitments undertaken, the State recognized its institutional

responsibility for the facts that took place, and committed itself to take the measures necessary to reexamine and reopen the corresponding investigations, strengthen the measures for the protection of human rights in the Province, and pay economic reparations to the family members of the victim.

4. The present friendly settlement report, prepared in accordance with Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, sets forth the facts alleged by the petitioners and the friendly settlement reached, as well as the Commission's decision to publish the report.

II. PROCESSING BEFORE THE COMMISSION

5. On October 10, 2001, during its 113^o regular period of sessions, the Commission approved Report N° 72/01, in which it established that it had competence to examine the case and that the petition was admissible in accordance with the terms of Articles 46 and 47 of the Convention. On October 23, 2001, the Commission transmitted the Admissibility Report to the parties, and at that time, in accordance with the terms of Article 48(1)(f) of the Convention, placed itself at the disposal of the parties with a view to arriving at a friendly settlement of the matter based on respect for the human rights established in that instrument.

6. Following the adoption of Report 72/01, on May 10, 2002 and July 1, 2002, the petitioners submitted additional observations on the merits. The State, for its part, presented observations that were received on October 10, 2001, December 28, 2001 and July 15, 2002, respectively. Each of these communications was duly transmitted to the other party.

7. Dialogue toward a possible friendly settlement was initiated in the course of a working meeting held on July 31, 2002, during a working visit the Commission carried out in Argentina. The Province of Chaco subsequently expressed its willingness to initiate this process by means of a note of August 23, 2002. The parties met periodically with the objective of advancing with respect to the eventual points of an agreement, and the Commission facilitated working meetings with this objective on October 18, 2002, during its 116^o period of sessions, February 28, 2003, during its 117^o period of sessions, and August 26, 2003, during another working visit to Argentina. The friendly settlement agreement was signed in the course of a working meeting held on October 17, 2003, during the Commission's 118^o period of sessions.

III. THE FACTS

8. The petitioners allege that, on June 25, 1990, Juan Ángel Greco approached the police station of the Barrio de las 500 Viviendas in Barranqueras, Province of Chaco, a dependency of the Comisaría of the Department of Puerto de Vilelas, to present a denunciation. The petitioners report that, instead of assisting Mr. Greco, the police detained him and transported him to the Comisaría of Puerto de Vilelas. According to the petitioners, once at the Comisaría, Mr. Greco was beaten by police officers. He was searched, his personal effects were taken, and he was placed in a small cell alone. They indicate that he was never informed of the reason for his arrest, and that the Police did not promptly inform the local judge on duty of the detention.

9. At approximately 1:00 a.m., a fire broke out in his cell, as a result of which Mr. Greco sustained serious burns. The petitioners allege that the gravity of the burns and amount of smoke produced indicate that the police did not respond to the fire promptly. They further allege that, notwithstanding the gravity of the injuries sustained, Mr. Greco was not transported to the hospital for a period of hours.

10. According to a statement sworn by Mr. Greco's companion, Bibiana M. D'Alfeo, on October 27, 1999, a police officer arrived at her residence at approximately 8:00 a.m. the morning of the facts to inform her that Mr. Greco had been detained and was hospitalized with "light" burns on his back. When she arrived at the hospital, he was bandaged from the waist up, including his arms and head, and was handcuffed to the bed. She reports that he was held in intensive care for three days, during which time he was generally unconscious due to sedatives, but was nonetheless handcuffed to the bed and under the custody of two police officers at all times. The petitioners allege that the agents assigned to stand guard at the door of the hospital room had been on duty at the time of his detention and the fire.

11. Ms. D'Alfeo further indicates that, after several days in the hospital, Mr. Greco was able to describe what had happened. He told her that he had been drinking beer with a friend in a local commercial center when a security guard told him to leave, provoking an argument. The guard then struck Mr. Greco with his belt, cutting the latter's left arm with the buckle. This prompted Mr. Greco to go to the police to denounce what had happened. Instead, he was detained and transported to the Comisaría, where he was dragged from the police vehicle by his hair, and beaten. Ms. D'Alfeo reports that he told her that, when they placed him in the cell, he protested and yelled that he was going to denounce the officers involved. She states that Mr. Greco told her that the police officers burned him in the cell.

12. Ms. D'Alfeo indicates that she remained at Mr. Greco's side throughout the time he was hospitalized, except for two brief instances when she went home to bathe. She states that the medical attention was so deficient that she had to provide virtually all the basic personal care he required. On July 4, during one of those brief absences, Mr. Greco died. She states that she received confusing accounts of what had happened. She further states that, notwithstanding the family's request that Mr. Greco's body be held in the morgue until his father could return from another province, the body was buried the following day without notice to his family, and without an autopsy.

13. The petitioners maintain that the facts denounced were not duly investigated. They indicate that a criminal process was opened against Mr. Greco in 1990 (file 1975/90) for allegedly having started the fire in the Comisaría. The charges against Mr. Greco and the process itself were dismissed in a sentence of May 9, 1992 due to the extinction of the claims.

14. The petitioners contend that the investigation that served as the basis for the foregoing criminal process was carried out under the authority of the same Sub-Commissioner who had been in charge of the Comisaría at the time of the events at issue. Consequently, that investigation was characterized by intrinsic deficiencies, as well as other irregularities. They sustain that these facts and the nature and intensity of the burns to the head and upper body of the victim demonstrate that the fire was ignited by a source introduced from outside the cell.

15. Mr. Greco's mother, Mrs. Zulma Bastianini de Greco, filed a denunciation in 1995 seeking to establish responsibility for the death of her son. That denunciation was dismissed on the basis that the court seized of the criminal process initiated against Mr. Greco in 1990 had already reviewed the evidence and found no indication of responsibility by any third party. The mother of the victim subsequently tried to obtain clarification through denunciations filed before different authorities of the judiciary and executive branches of the Province and Republic.

IV. FRIENDLY SETTLEMENT

16. The State and the petitioners signed a friendly settlement agreement, the text of which establishes:

The parties in the Case registered as N° 11.804–Juan Ángel Greco–before the Inter-American Commission on Human Rights: The Center for Legal and Social Studies, represented in this accord by attorneys Víctor Abramovich and Andrea Pochak, both acting as petitioners, and the Government of the Republic of Argentina, in its capacity as State Party to the American Convention on Human Rights, hereinafter “the Convention,” and acting under the express mandate set forth in Articles 99, subsection 11, and 126 of the Constitution of the Argentine Nation and pursuant to that set forth in Article 28 of the Convention, represented by the Special Representative for Human Rights in the International Sphere, Ambassador Alicia Oliveira, have the honor to inform the Honorable Inter-American Commission on Human Rights that they have reached a friendly settlement agreement on the petition, the contents of which follow, and request that, pursuant to the consensus reached, the agreement be accepted and that the report provided for in Article 49 of the Convention be adopted.

I. The responsibility of the Province of Chaco in the Death of Juan Ángel Greco.

1. By means of the accord signed in the Ministry of External Relations, International Commerce and Religion on October 10, 2003, the Government of the Province of Chaco has declared that, on the basis of the records that exist with respect to the events that led to the death of Juan Ángel Greco on July 4, 1990 following his detention by the Provincial Police on June 25, 1990, and in light of the evidence and documents added within the framework of the substantiation of the petition before the IACHR, and having considered Admissibility Report N° 72/01 adopted by the Commission during its 115° regular period of sessions and other elements of conviction that were incorporated in the friendly settlement process initiated in August of 2002, it finds that sufficient elements exist to recognize the objective responsibility of the Province of Chaco in the circumstances of the detention and death of Juan Ángel Greco.

2. Therefore, and pursuant to the international nature of the violations of rights recognized above, which occurred within the jurisdiction of the Province of Chaco, the Government of the Argentine Republic expresses that it has no objection to accompanying this recognition in the international sphere, in its capacity as State party to the Convention and in accordance with the Constitutional norms set forth in the prior section; requesting that the Commission accept as recognized the facts that occurred in this jurisdiction in the terms expressed in point 1.

II. Non-monetary measures of reparation:

The Government of Argentina and the Petitioners request that the Honorable Inter-American Commission accept the commitments related to non-monetary measures of reparation assumed by the Government of the Province of Chaco through the accord cited in point I.1, that are transcribed as follows:

“Within the framework of the republican division of powers, the Government of the Province of Chaco has requested that the Provincial Attorney General’s Office reexamine the criminal case titled: “COMISARIA PUERTO VILELAS S/ELEVA ACTUACIONES,” File N° 1975/90, Year 1990, of the judicial case titled “BASTIANINI DE GRECO ZULMA S/SOLICITA INTERVENCION ALTO TRIBUNAL A EFECTOS ESCLARECER DENEGACION DE JUSTICIA EN CAUSA QUE FUERA VICTIMA SU HIJO.” File N° 38.730, Folio 345, Year 1995, and according to the request submitted to the Judge for the matter, that Office has pronounced in terms favorable to its reopening. In this sense, the Government of the Province of Chaco undertakes to send, through the Office for Human Rights of the Foreign Ministry, a legalized and certified copy thereof to the petitioners and the Inter-American Commission on Human Rights. Within the framework of its competences, the Government of the Province of Chaco undertakes to encourage the reopening of the criminal case and the corresponding investigations.

In attention to the measures adopted by the Provincial Attorney General’s Office and the Admissibility Report N° 72/01 adopted by the Inter-American Commission on Human Rights, the Government of Chaco commits itself -- once the criminal case has been reopened -- to direct the reopening of the administrative case N° 130/91-250690-1401.-

The Government of the Province of Chaco, in the framework of its competences, commits itself to ensuring that the family members have access to the judicial and administrative investigations.”

III. Economic reparation:

The Government of the Argentine Republic and the petitioners request that the Honorable Inter-American Commission accept the commitments concerning measures of economic reparation assumed by the Government of the Province of Chaco through the accord cited in point I.1, which are set forth as follows:

“1. Beneficiaries of the present agreement: The Government of the Province of Chaco recognizes Mrs. Zulma Bastianini de Greco, and the child of Juan Ángel Greco, the girl named Poicú Ailín D’Alfeo, whose legal representation is exercised by her mother, Ms. Bibiana D’Alfeo, as the only beneficiaries of any indemnity, and they for their part ratify their status as the only successors in law and beneficiaries.

2. Indemnity: The Government of the Province of Chaco undertakes to provide economic reparation to the family members of Juan Ángel Greco in the sum of three hundred thousand pesos (\$300,000) that shall be paid to Mrs. Zulma Bastianini de Greco in the amount of thirty

thousand per month in the time period specified in point 3 of the present item, that amount comprising material damages, moral damages, lost wages, costs, fees and any other classification that would arise from the responsibility assumed by the Province of Chaco.

Given the special situation of the family, the petitioners declare that the agreement that has been arrived at with respect to the indemnity has the approval and consent of the mother of Mr. Juan Ángel GRECO, and of his companion, both in her own name and that of her minor child, and with the intervention of the Ministerio Pupilar de la Primera Circunscripción Judicial of Chaco and the authorization of the competent judge. The petitioners place on record that they renounce and desist from any other indemnity of any nature that arises or could arise with respect to the detention and death of Mr. Juan Ángel Greco.

3. Exemption from taxes, compliance and delay: the amount of the indemnity granted by the Province of Chaco shall not be subject to any existing or future tax, contribution or fee. The agreed amounts will be issued within the first ten (10) working days of each month, with the first payment to be issued in a period no greater than sixty (60) days as counted from the proper notification of the acceptance of the agreement by the Commission and the adoption of the report provided for in Article 49 of the Convention. In consequence, the Government of the Province of Chaco commits itself to issue the payments in due time and form, with delay engaging the penalty of payment of the highest rate of interest for compensation and delay provided for or permitted by the national and/or provincial legislation.”

IV. Other reparation:

The Government of the Argentine Republic and the Petitioners request that the Honorable Inter-American Commission accept the commitments concerning other reparation assumed by the Government of the Province of Chaco through the accord cited in point I.1, which are transcribed as follows:

“The Government of the Province of Chaco commits itself to the publication of this agreement in the principle written press sources of the nation and the Province of Chaco.”

V. Non-monetary measures of reparation already adopted, their continuity and further development

The Government of the Argentine Republic and the Petitioners request that the Honorable Inter-American Commission accept the commitments undertaken by the Government of the Province of Chaco through the accord cited in point I.1, concerning measures of reparation already adopted, their continuation and their further development, which are transcribed as follows:

“The Government of the Province of Chaco commits itself to continue pursuing legislative and administrative measures for the improved protection of Human Rights. Specifically, it is placed on record that a draft law creating a Criminal Prosecutor’s Office for Human Rights has been developed and transmitted to the Provincial Chamber of Deputies for its study and approval. Further, the work of the Permanent Commission for Control of Detention Centers, created by Resolution No. 119, of February 24, 2003, of the Ministry of Government, Justice and Labor of

the Province of Chaco, will be strengthened. In this same regard, further emphasis will be placed on the work of the Organ of Institutional Control (O.C.I) created by Article 35 of the Organic Police Law of the Province of Chaco N° 4.987, directing it toward the more effective protection of human rights on the part of the Provincial Police. At the initiative of the Executive, the Provincial Counsel for Education and Promotion of Human Rights created by Law N° 4.912 was constituted in the sphere of the Chamber of Deputies. The representatives of the distinct intervening organs and powers have already been designated and convoked. The duly certified and legalized records of these instruments are attached as Annexes I, II, III and IV. In relation to the measures set forth, some of which were adopted in the course of this friendly settlement procedure, the Government of the Province of Chaco undertakes to keep the petitioners and the Inter-American Commission on Human Rights informed as to the status of advances through the Office for Human Rights of the Foreign Ministry.”

VI. Petition

The Government of the Argentine Republic and the Petitioners celebrate the signing of the present agreement, express their full conformity with its content and scope, mutually value the good will demonstrated, and formally request that the Honorable Inter-American Commission on Human Rights ratify it and adopt the report provided for in Article 49 of the American Convention on Human Rights.

V. DETERMINATION AS TO COMPATIBILITY AND COMPLIANCE

17. The IACHR reiterates that, in accordance with Articles 48(1)(f) and 49 of the Convention, the friendly settlement process is undertaken with a view “to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in [the] Convention.” The acceptance of this process expresses the good faith of the State to comply with the object and purpose of the Convention pursuant to the principle of *pacta sunt servanda*, through which States must comply in good faith with the obligations they undertake in treaties. The Commission would also like to reiterate that the friendly settlement procedure contemplated in the Convention permits the resolution of individual cases in a non-contentious manner, and has been demonstrated in cases relative to various countries to offer an important mechanism for resolution that both parties may utilize.

18. The Inter-American Commission has closely followed the development of the friendly settlement process in the instant case. The Commission greatly values the efforts made by both parties to arrive at a settlement based on the object and purpose of the Convention.

VI. CONCLUSIONS

19. Based on the foregoing considerations and given the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to once again convey its deep appreciation for the efforts made by the parties and its satisfaction with the friendly settlement arrived at in the instant case, based on the object and purpose of the American Convention.

20. On the basis of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on October 17, 2003.
2. To continue with the follow-up and supervision of the points of the friendly settlement agreement, compliance with which remains pending, and in this context remind the parties of their commitment to periodically report to the IACHR on compliance with the present friendly settlement.
3. To make public this report and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.