

REPORT NO. 15/10
PETITION 11.758
FRIENDLY SETTLEMENT
ARGENTINA
RODOLFO LUIS CORREA BELISLE
March 16, 2010

I. SUMMARY

1. On May 28, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition lodged by Alicia Oliveira, Raúl Zaffaroni, and Alberto Bovino, with the joint representation of the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners"), alleging that the Republic of Argentina (hereinafter "the State" or "the Argentine State") was in violation of Articles 7, 8, 24, and 25, in conjunction with Article 1(1), of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), to the detriment of Mr. Rodolfo Luis Correa Belisle (hereinafter "the alleged victim"). On June 25, 2004, during the processing of the case, the petitioners sent a communication to the IACHR requesting that the Center for Legal and Social Studies (CELS) be considered a co-petitioner.

2. The co-petitioners indicated that in April 1994 the alleged victim, a captain in the Argentine Army, was ordered to conduct a search of the Zapala Regiment, which led to the discovery of the body of Private Carrasco, who had joined the regiment a few days earlier. They added that a criminal proceeding was begun as a consequence of the death of Private Carrasco. During that proceeding, Correa Belisle was summoned to testify, and he allegedly reported activities he considered illegal that had been carried out by military personnel. The petitioners alleged that as a consequence of his testimony and because the then-Chief of Staff was offended, a proceeding was initiated against Correa Belisle in the military criminal courts, in which he was sentenced to three months' imprisonment for the military offense of "disrespect."¹

3. The petitioners alleged that the Argentine State was responsible for the arbitrary detention of Correa Belisle, as well as for the various violations of judicial guarantees and due process that occurred during the proceedings against him.

4. Pursuant to Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, in this friendly settlement report the Commission summarizes the facts alleged by the petitioning party. It also transcribes the friendly settlement agreement signed on August 14, 2006, by the Republic of Argentina and by the co-petitioners, which was approved on September 18, 2007, via National Executive Decree No. 1257/2007. In addition, the Commission approves the agreement signed between the parties and decides to publish this report.

II. PROCESSING BY THE COMMISSION

5. On February 24, 2004, the IACHR approved Admissibility Report No. 2/04, in which it declared the petition to be admissible with respect to the alleged violations of Articles 7, 8, 13, 24, and 25, in conjunction with Articles 1(1) and 2, of the American Convention. That report was transmitted to the parties in a communication dated March 12, 2004, in which the IACHR placed itself at the disposal of the parties to reach a friendly settlement of the matter pursuant to Article 48(1)(f) of the American Convention and Article 38(2) of its Rules of Procedure. Through a communication dated October 26, 2004, the petitioners expressed to the IACHR their willingness to submit to a friendly settlement procedure.

¹ This conduct is described in the Code of Military Justice as follows: "ARTICLE 663. - Any military personnel who, while on military service or on the occasion thereof, or in the presence of assembled troops, injures, threatens, insults or in any other way behaves with disrespect toward a superior, verbally, in writing, with drawings or with conduct unbecoming, shall be punished by imprisonment. Should this occur in time of war in the face of the enemy the punishment shall be death or imprisonment."

6. In addition, the Commission received communications from the petitioners on the following dates: May 24, 2004; June 29, 2004; July 7, 2004; January 12, 2005; September 1 and 30, 2005; February 17, 2006; and June 30, 2006. These were duly forwarded to the State.

7. The IACHR also received communications from the State on the following dates: March 3 and 21, 2006; April 27, 2006; August 21, 2006; and September 1, 2006. These were duly forwarded to the petitioning party.

8. On September 26, 2004, a working meeting was held between the parties at the headquarters of the Ministry of Foreign Affairs, International Trade, and Worship in Buenos Aires. In addition, the Commission convened the two parties for working meetings on the following dates: March 2, 2005; October 19, 2005; and March 8, 2006. These took place in the context of IACHR periods of sessions.

9. On September 19, 2006, the IACHR received a copy of the friendly settlement agreement, signed for one party by the Center for Legal and Social Studies (CELS), represented at the signing ceremony by Dr. Gastón Chillier, and by the Center for Justice and International Law (CEJIL), represented at the ceremony by Dr. Julieta Di Corletto, and for the other party by the Republic of Argentina, represented by the Under-Secretary for Advancement and Protection of Human Rights of the Ministry of Justice and Human Rights of the Nation, Dr. Rodolfo Aurelio Mattarollo; the Cabinet Advisor for the Ministry of Defense, Dr. Ileana Arduino; and the Special Representative for Human Rights in the International Sphere, Ambassador Horacio Méndez Carreras.

III. THE FACTS

10. The petitioners indicated that the alleged victim was arbitrarily detained, under the penalty of arrest issued by the Argentine military justice system, in violation of Article 7 of the American Convention, in a proceeding that also flagrantly violated his right of defense, the principle of impartiality of the judicial authorities, and his right to equal protection, established in Articles 8, 24, and 25 of the Convention.

11. Mr. Correa Belisle graduated from the National Military College in 1980 with the rank of second lieutenant, specialized for eight years in air defense, and subsequently spent eight years in the Zapala Regiment (province of Neuquén), where in 1993 he was named Artillery Captain.

12. The petitioners indicated that in March 1994, when Argentina still had compulsory military service, the youth Omar Carrasco joined the Zapala Regiment.

13. The petitioners stated that on April 6, 1994, Captain Rodolfo Luis Correa Belisle initiated a search of the Zapala Regiment, ordered by his superior, Lieutenant Colonel With, who when asked what it was that was being searched for, answered "a dead body." They added that as a result of that operation, the body of Private Carrasco had indeed been found. They stated that in May of that same year, Correa Belisle was taken in General Balza's plane to Staff Headquarters, where he was questioned about the facts connected with the search, in order "to determine everything he knew and what risk [the alleged victim] posed to the institution and his superiors."

14. As a result of the death of Private Carrasco, a criminal proceeding was instituted before the ordinary courts, which gave rise to the prosecution of one officer, two non-commissioned officers, and two private soldiers. The petitioners indicated that as part of that proceeding, several officers, non-commissioned officers, and soldiers who served with the regiment to which the youth Carrasco belonged were summoned to testify, among them Captain Rodolfo Luis Correa Belisle.

15. In his testimony, Correa Belisle stated that he had knowledge of activities carried out by army intelligence personnel in connection with the Carrasco case, as well as of tampering with evidence to cover up the incident. Furthermore, when he was advised that the Chief of Staff himself, General Martín Balza, had denied that intelligence activities had been carried out, Correa Belisle testified, "... but

I've heard even General Balza lie about the Carrasco case..." and "I've heard...General Balza giving his opinion on the Carrasco case in a report done on him...and he was lying...."² The petitioners affirmed that the Chief of Staff was offended by that testimony and initiated a criminal proceeding before the military criminal courts against Rodolfo Correa Belisle. The proceeding was heard by Military Examining Judge No. 9 on the charge of "disrespect."

16. The petitioners indicated that on October 21, 1996, the military examining judge sentenced Correa to prison because he considered that he had committed the offense of disrespect with the declarations regarding General Balza that he made to the ordinary courts and to some media outlets. The petitioners also reported that on November 14, 1996, they presented a motion for dismissal for lack of jurisdiction with the Federal Court of Neuquén, alleging infringement of the right to a competent judge previously established by law, because they considered that this case pertained to the jurisdiction of the ordinary courts, since the only criminal conduct in which Correa might possibly have engaged when he made the declarations in question was defamation,³ an offense over which the federal civilian courts have jurisdiction.

17. The motion for dismissal was denied on December 18, 1996, by the Federal Judge of Neuquén, who found that disrespect was an essentially military offense in light of the military quality and nature both of the author and of the legally protected interest, namely, military discipline; accordingly, only military tribunals had competence to pass judgment on it. The case was subsequently referred to the Permanent War Council for a decision at trial, which sentenced Correa to three months' imprisonment for the military offense of disrespect, recognized in Article 665 of the Code of Military Justice⁴ (hereinafter "CJM" by its initials in Spanish).

18. According to the petitioners, during the military proceeding Correa Belisle's right of defense was violated on several counts. They mentioned, among other things, his presentation at the inquiry without legal counsel, which they say is due to the fact that the CJM prohibits it; the impossibility of appointing trusted legal counsel because the military tribunal only allows the presence of military defense attorneys; and the unfounded refusal by the tribunals of several requests for the examination of evidence that would have tended to demonstrate the innocence of the accused. Furthermore, the petitioners considered that the procedure established by the CJM contained numerous provisions that violated the right of defense, since it unlawfully curbed the possibility of exercising this right in an effective manner.

19. The petitioners indicated that the judges who heard Correa Belisle's case were hierarchically subordinate to the Chief of Staff, General Martín Balza, which undermined principles of due process, particularly since the general was able to intervene directly in the proceeding, as he indeed did when he addressed a note to the examining judge concerning the place where Correa should be detained, and also in the issuance of a summons by the prosecutor's office.

20. The petitioners stated that the only mechanism provided under domestic law against the lack of judicial review was the writ of *habeas corpus*, which was filed in a timely manner on January 16, 1997, by Correa Belisle's civilian legal counsel before the competent judge. That remedy was rejected on the same day it was filed because the court deemed that it was not the suitable or appropriate remedy to challenge the validity of a disciplinary punishment ordered by a competent body in accordance with the law. This decision was confirmed at second instance on January 17 that same year.

IV. FRIENDLY SETTLEMENT

² Statement taken from the report presented to the IACHR by the petitioners on May 28, 1997.

³ Defamation is categorized at Article 110 of the Criminal Code, which provides, "Anyone who injures another person's honor or reputation shall be punished with a fine or imprisonment from one month to one year."

⁴ This article provides, "Any military personnel who commits the acts mentioned in Article 663, while not on active duty, shall be punished, in all cases, with short-term imprisonment, discharge, or another disciplinary punishment."

21. On August 14, 2006, the co-petitioners, along with representatives of the Republic of Argentina, signed the friendly settlement agreement, the text of which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Petition No. 11.758 in the register of the Inter-American Commission on Human Rights—the co-petitioners: Rodolfo Correa Belisle, the Center for Legal and Social Studies (CELS), represented at this signing ceremony by Dr. Gastón Chillier, and the Center for Justice and International Law (CEJIL), represented at this ceremony by Dr. Julieta Di Corletto; and the Government of the Republic of Argentina, in its capacity as state party of the American Convention on Human Rights, hereinafter "the Convention," represented by the Under-Secretary for Advancement and Protection of Human Rights of the Ministry of Justice and Human Rights of the Nation, Dr. Rodolfo Aurelio Mattarollo, the Cabinet Advisor for the Ministry of Defense, Dr. Ileana Arduino, and the Special Representative for Human Rights in the International Sphere, Ambassador Horacio Méndez Carreras—attest that they have reached an agreement for friendly settlement of the petition, the contents of which are provided below.

I. The friendly settlement procedure

1. Taking into account the conclusions in Admissibility Report No. 2/04, which was adopted by the Inter-American Commission on Human Rights on August 24, 2004, during its 119th regular period of sessions—and which is attached to this agreement—the Argentine State and the petitioners agreed to engage in dialogue in order to explore the possibility of a friendly settlement of the petition.

2. On that occasion, the petitioners stated that the work plan that would be followed should include: a) A public recognition of responsibility by the State, including an apology; b) A legislative reform related to the Code of Military Justice; and c) A monetary reparation.

3. From that point on the parties began to engage in a process of dialogue, which included the evaluation of different initiatives related to the proposed work plan.

II. Friendly settlement agreement

Bearing that in mind, the Government of the Republic of Argentina and the petitioners agree:

1. Recognition of international responsibility

Having evaluated the facts reported in light of the conclusions of Admissibility Report No. 2/04, and considering Report No. 240544 of February 27, 2004, produced by the Office of the Auditor General of the Armed Forces, which indicated, among other things, that "...we are facing a clear situation—a system of administration of military justice that does not ensure the observance of the rights of those who become involved in criminal proceedings within that jurisdiction, and that [is] powerless to ensure an upright administration of justice," the Argentine State recognizes its international responsibility in the case for the violation of Articles 7, 8, 13, 24, and 25, in conjunction with Article 1.1, of the American Convention on Human Rights, and commits to adopt the reparation measures provided for in this instrument.

2. Non-monetary reparation measures

a) The Argentine State apologizes to Mr. Rodolfo Correa Belisle

Based on the preceding recognition of international responsibility, the Argentine State considers it fitting to present its sincerest apologies to Mr. Rodolfo Correa Belisle for the event that occurred in 1996, during which he was subject to a military proceeding and trial that culminated with a 90-day sentence as a consequence of the application in this matter of norms that are incompatible with required international standards.

To that effect, and in accordance with the evaluation of the circumstances surrounding the case brought by the petitioners before the Inter-American Commission on Human Rights, and for which the competent bodies of the national State have taken suitable action, the prosecution of Rodolfo Correa Belisle has not complied with the strict observance of the rights and guarantees that

international human rights law requires in this area, and thus this apology is imposed as part of the commitment assumed by the national State.

b) Reform of the System for the Administration of Military Justice

In the working meeting held during the IACHR's 124th regular period of sessions, the government delegation reported on the state of the efforts being carried out by the Argentine State with regard to the legislative reform involving the military justice system. In that regard, it reported on the Ministry of Defense's issuance of Resolution No. 154/06, which formed a working group made up of experts of the Secretariat for Human Rights and the Secretariat for Criminal Policy and Prison Affairs of the Ministry of Justice and Human Rights of the Nation, various representatives of civil society organizations, the University of Buenos Aires, and members of the Armed Forces, whose work has produced agreements on the transformation of the military disciplinary system, a comprehensive review of military legislation, and the consideration of questions pertaining to the regulation of activities in the framework of peace operations and situations of war, having set a time frame of 180 days for finishing its activities. The aforementioned working group completed, before the established deadline, the preparation of a draft reform of the System of Administration of Military Justice, which was formally presented to the Minister of Defense on July 19, 2006.

Bearing this in mind, the Argentine State is committed to making its best efforts to send that draft reform to the National Congress before the end of the current regular period of legislative sessions.

c) Publication of the friendly settlement agreement

The Argentine State is committed to publish the text of this agreement, one time and in full, in the Official Gazette of the Republic of Argentina; in the newspapers *Clarín*, *La Nación*, *Río Negro*, and *La Mañana del Sur*; as well as in the Confidential Gazette of the Army, the Public Gazette of the Army, *Soldados* magazine, and in the *Tiempo Militar* newspaper, once this agreement is duly approved in accordance with the provisions of Point III of this instrument and ratified by the Inter-American Commission on Human Rights, in line with the provisions of Article 49 of the American Convention on Human Rights.

3. Petitioner's statement with respect to monetary reparations

Bearing in mind that the petitioner has filed suit for damages and prejudicial consequences against the State of Argentina in a case underway, called "CORREA BELISLE, RODOLFO LUIS c/ESTADO NACIONAL ARGENTINO - ESTADO MAYOR GENERAL DEL EJERCITO S/PROCESO DE CONOCIMIENTO," File No. 8752/98, National Court of First Instance of the Federal Administrative Contentious Court No. 1, Secretariat No. 1, the petitioner states that he declines any monetary claim in an international venue since this makes up part of a complete and total reparation that he is seeking in the aforementioned case before the courts of the Republic of Argentina.

III. Signature *ad referendum*

The parties state that this instrument is signed *ad referendum* of the legislative sanction of the draft reform of the Code of Military Justice referenced in Point II.2.b. Once that occurs, the Inter-American Commission on Human Rights will be asked to approve this friendly settlement agreement and to adopt the report provided for in Article 49 of the American Convention on Human Rights.

IV. Conclusions

The Government of the Republic of Argentina and the Petitioners sign this agreement, express their complete acceptance of its content and scope, and mutually value the good will that was evident during the negotiation process.

They attest that in order for this agreement to be finalized it must be approved by executive decree.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

22. The IACHR reiterates that under Articles 48(1)(f) and 49 of the Convention, this process has the objective of "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The State's consent to pursue this avenue is evidence of its good faith to honor the Convention's purposes and objectives, based on the principle of *pacta sunt servanda*. The Commission also wishes to point out that with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement procedure has proved to offer an important and effective vehicle that both parties can use to arrive at a solution.

23. The IACHR observes that the first article of the second section in the friendly settlement agreement contains the State's recognition of international responsibility, in its capacity as State Party to the Convention, as well as its recognition of the violations of Articles 7, 8, 13, 24, and 25, in conjunction with Article 1(1), of the Convention and its commitment to adopt the reparation measures provided for in the friendly settlement agreement. The Commission values the State of Argentina's recognition of responsibility for its failure to fulfill its international obligations with respect to the rights enshrined in Articles 7, 8, 13, 24, and 25, in conjunction with Article 1(1), of the American Convention on Human Rights.

24. The Inter-American Commission has closely followed the development of the friendly settlement reached in the present case, as it expressed in Press Release No. 43/06, in which the IACHR underscored the importance of the agreement signed between the government of Argentina and the petitioners, which included the commitment to reform the Code of Military Justice so that military personnel are given the same due process guarantees as those enjoyed by civilians.

25. The Code of Military Justice was repealed in November 2007, and a new system was adopted by which crimes committed by members of the military will be prosecuted through ordinary courts. The new law eliminates the military jurisdiction and abolishes the death penalty. It also establishes a new disciplinary structure that does away with discriminatory penalties related to homosexuality and penalizes sexual harassment within the armed forces as a serious or very serious offense.

26. Subsequently, on August 12, 2008, the IACHR issued Press Release No. 36/08, in which it expressed its deep satisfaction over the repeal of the Code of Military Justice in Argentina and the adoption of a new system, in compliance with the Friendly Settlement Agreement contained in Decree No. 1257/2007, signed on September 18, 2007. The Commission greatly values the efforts the parties made to reach this settlement and declares that the settlement is compatible with the object and purpose of the Convention.

VII. CONCLUSIONS

27. Based on the foregoing considerations 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 deep appreciation of the efforts carried out by the parties and its satisfaction over the achievement of the friendly settlement agreement in this case, based on the object and purpose of the American Convention.

28. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN CONVENTION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on August 14, 2006.

2. To continue to monitor and supervise compliance with the obligation to publish the friendly settlement, in keeping with Paragraph c) of Point 2 of the agreement, and in this context, to remind the parties of their commitment to regularly inform the IACHR as to compliance.

3. To publish this 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 16th day of the month of March, 2010.
(Signed): Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, Rodrigo Escobar Gil, and José de Jesús Orozco Henríquez, members of the Commission.