

**REPORT No. 18/10**  
**PETITION 228-07**  
**FRIENDLY SETTLEMENT**  
**CARLOS DOGLIANI**  
**URUGUAY**  
March 16, 2010

**I. SUMMARY**

1. On February 28, 2007 the Inter-American Commission on Human Rights (hereinafter "the IACRH") received a petition lodged by Carlos Dogliani, the *Asociación de la Prensa Uruguaya* [Uruguayan Press Association], and the *Instituto de Estudios Legales del Uruguay* [Legal Studies Institute of Uruguay] (hereinafter "the petitioners"), against the Republic of Uruguay (hereinafter "the State") for the alleged violation of the right established in Article 13 (freedom of thought and expression) in conjunction with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions within domestic law) of the American Convention on Human Rights (hereinafter "the American Convention"), to the detriment of Carlos Dogliani.

2. The petitioners maintain that Carlos Dogliani wrote two newspaper articles that were published on March 25 and April 1, 2004 in the *El Regional* weekly paper reporting that two public officials in the Paysandú Departmental government were involved in a case of irregular remission of a taxpayer's debt to the tax administration. The petitioners added that because of this, on August 30, 2006, the Supreme Court of Uruguay upheld the conviction and five-month prison sentence of Carlos Dogliani, stating that he was "guilty of four counts of defamation, which were aggravated because they were repeated" against the aforementioned public officials.

3. On September 18, 2009, the Uruguayan State and the petitioners signed a friendly settlement agreement. In this report, adopted in accordance with Article 49 of the American Convention, the IACRH summarizes the facts alleged by the petitioners, states the agreement reached by the parties and progress made towards implementation of that agreement, and decides to publish this report.

**II. PROCESSING BY THE IACRH**

4. The petition was received in the IACRH on February 28, 2007 and transmitted to the State on March 29, 2007. On July 5, 2007 the State submitted a message reporting on the various actions being taken internally in order to "reach a friendly settlement with the petitioner." On August 20, 2007, the petitioners submitted to the IACRH information regarding the progress being made and expressing their interest in "the friendly settlement route."

5. On September 6, 2007 the IACRH held a working meeting on the petition during its 129th Special Period of Sessions held in Asunción, Paraguay. On June 18, 2008 the IACRH made itself available to the parties to help reach a friendly settlement. On August 14, 2008 the petitioners informed the IACRH that "the negotiations to reach a friendly settlement had come to a standstill," and they asked the Commission to adopt "any measures necessary to urge the Government to go forward and finalize the friendly settlement procedure." On September 22, 2008 the State submitted a message informing the IACRH of its efforts to reach a friendly settlement in this matter. On October 23, 2008 the IACRH made the information submitted by the State available to the petitioners, asking them to present their observations within one month of that date.

6. On March 13, 2009 the petitioners ratified to the IACRH the terms of the message dated August 14, 2008 and asked the Commission to "propose to the State that the [Special Rapporteur on Freedom of Expression] serve as a mediator in order to urge the friendly settlement process forward." On March 17, 2009 the IACRH sent the State the information provided by the petitioners. On May 6 and August 31, 2009, the State reiterated its willingness to reach a friendly settlement with the petitioner and expressed its acceptance of the Special Rapporteur as mediator to begin a formal friendly settlement

process. On August 14, 2009 the IACtHR sent a message to the parties offering the mediation of the Special Rapporteur during the process of reaching a friendly settlement to the petition. On September 18, 2009 the parties held a meeting in Montevideo, Uruguay, with the participation of the Special Rapporteur for Freedom of Expression. During that meeting, the parties signed a friendly settlement agreement. On October 6, 2009, the State sent a copy of that document to the IACtHR as well as a press release issued by the Ministry of Foreign Affairs after the friendly settlement agreement was signed.

7. On December 25, 2009 the petitioners reported that the Uruguayan State had “fulfilled all of the obligations undertaken during the friendly settlement process [...], and for this reason, they asked the IACtHR to close the case.

### III. FACTS

8. The petitioners maintain that Carlos Dogliani wrote two newspaper articles that were published on March 25 and April 1, 2004 in *El Regional* weekly paper. The petitioners affirm that the first article appeared on the front page and page 9 of the weekly under the title “Paysandú Local Government. Fraud. Mayor Lamas abuses his power, ignores the Provincial Council, and demands that his legal department break the law. The Rattín case promises to become a major scandal. Lamas granted 90% remission of a debt. \$30,000 was paid when \$332,000 was owed. The immediate resignation of Dr. Martín Etchebarne, legal perpetrator of the swindling of the Paysandú residents, is expected.” According to the petitioners, the second article appeared on page 7 of the weekly under the title “Man loses many things and sometimes recovers them, but I must tell you and it is good to remember that ... if one loses shame, it is never recovered.”

9. The petitioners indicate that on April 30, 2004 the Mayor of Paysandú and Martín Etchebarne Parietti filed charges against Carlos Dogliani “for criminal libel and defamation in the written press” based on Articles 26 and others of Law No. 16.099, and Articles 333 and 334 of the Penal Code.<sup>1</sup>

10. The petitioners add that on December 14, 2004 the Paysandú Court of First Instance, Second Rotation, handed down Judgment No. 255 which convicted Carlos Dogliani as “the perpetrator criminally liable for four counts of defamation, particularly aggravated because of their repeated nature, and sentenced him to five months in prison.”<sup>2</sup> Judgment No. 255 also conditionally suspended execution of the sentence.

11. The petitioners state that on July 21, 2005 the Paysandú Criminal Court of Appeals, Third Rotation, issued Judgment No. 186 which ordered revocation of the judgment of the court of first instance and acquitted Carlos Dogliani of the charges against him. However, the petitioners state that on August 10, 2005 the National Criminal Prosecutor of the Third Rotation filed a motion against the judgment by the Appeals Court and therefore, on August 30, 2006, the Supreme Court of Uruguay “overturned the challenged ruling and upheld the decision of the court of first instance.”

12. The petitioners state that the Supreme Court of Uruguay convicted the journalist “for divulging information of manifest public interest, regarding acts carried out by high authorities in the

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<sup>1</sup> Article 26 of Law No. 16.099: “Criminal libel and defamation committed in the media shall always be punished with deprivation of liberty, within the limits established for each crime in the Penal Code. Perpetrating such crimes through the mass media is considered to be an aggravating circumstance incurring greater criminal liability.”

Article 333 of the Penal Code: “He who in front of several people gathered or separate, but in such a way that the remarks can be disseminated, attributes a certain act to an individual, which if true might lead to criminal or disciplinary proceedings, or exposes that individual to hatred or public disdain, shall be punished with four months to three years imprisonment, or a fine of 80 to 800 readjustable units.”

Article 334 of the Penal Code: “He who, aside from the cases set forth in the foregoing Article, offends in any way, with written words or acts, the honor, rectitude, or decorum of a person, shall be punished with three to 18 months imprisonment or a fine of 60 to 400 readjustable units.”

<sup>2</sup> Judgment No. 255 affirmed that “the facts considered to be fully proven are in line with the provisions of Article 333 of the Penal Code. Also, Articles 18 and 60 of that Code, and Articles 19 and 26 of Law No. 16.999.”

municipal government of Paysandú Department (the mayor and a legal advisor)" and that "the conviction was based on allegations of criminal libel and defamation committed through the media." According to the petitioners, the decision "handed down by the Supreme Court [...] had a chilling effect on freedom of expression, thus silencing the reporting of information on matters of public interest that involve high ranking political officials."

13. As part of the friendly settlement process, the petitioners requested that several institutional and legislative changes be instituted, such as implementation of a training program on freedom of expression and access to information for government officials, and the de-criminalization of the communications offenses established in the Penal Code and in Law No. 16.099. They also requested that Carlos Dogliani be given adequate redress for the violation of his right to freedom of expression in the following ways: that the State's international liability be acknowledged; that the conviction be overturned; that fair compensation be paid; and that the friendly settlement agreement be published in the *Diario Oficial* and in a daily newspaper with national circulation.

#### **IV. FRIENDLY SETTLEMENT**

14. On September 18, 2009, the alleged victim, Carlos Dogliani, his representatives, Jorge Pan, Diego Camaño, and Edison Lanza, and the representative of the State, Ambassador Nelson Fernández, in the presence of the Special Rapporteur on Freedom of Expression, Catalina Botero, as witness of honor, signed the friendly settlement agreement, whose text establishes the following:

**FRIENDLY SETTLEMENT:** At the headquarters of the Ministry of Foreign Affairs of the Republic of Uruguay, there appeared for the first party: Carlos Dogliani, Uruguayan, of legal age, bearer of the Identity card No. 1.245.447-9, domiciled at San José 1330, accompanied by his supporters Messrs. Jorge Pan and Diego Camaño for the *Instituto de Estudios Legales y Sociales del Uruguay* (IELSUR) and Mr. Edison Lanza for the *Asociación de la Prensa Uruguaya* (APU), and for the second party: the Acting Minister of Foreign Affairs of Uruguay, Ambassador Nelson Fernández, on behalf of the Republic of Uruguay, who agree to sign this friendly settlement agreement.

**Background:** Journalist Carlos Dogliani was prosecuted and convicted of four counts of repeated criminal libel pursuant to the Penal Code and Law No. 16.099 (Press Law). Once the domestic legal remedies were exhausted, in February of 2007 the journalist sought protection under the provisions of Article 13 of the American Convention on Human Rights, by lodging a petition before the Inter-American Commission on Human Rights (P.228-07).

After analyzing the case, the Uruguayan State informed the Inter-American Commission of its willingness to enter into a dialogue with the petitioner aimed at resolving the matter with a friendly settlement.

1. The State acknowledges that the conviction of the petitioner was based on criminal laws that are incompatible with the standards and principles of human rights regarding freedom of expression, and that this case violated the victim's rights as a journalist.
2. The journalist, Carlos Dogliani, declares that he is satisfied with the full redress given to his case, which has entailed the adoption of significant legislative reform through the enactment of Law No. 18.515 of June 26, 2009.
3. Journalist Carlos Dogliani also acknowledges the important steps that have been taken by the State in this regard, which have strengthened the role of journalists as well as their social recognition.
4. Journalist Carlos Dogliani accepts the sum of US\$8,000 (eight thousand dollars, U.S.) as indemnification for the damages suffered from his conviction under the now-repealed provisions of the Penal Code and Law No. 16.099.
5. Journalist Dogliani will file a motion before the Judicial Branch to overturn his conviction.
6. The State and the petitioner agree to appear jointly, through a note, before the Inter-American Commission on Human Rights to inform the Commission of the closure of the proceedings and the archiving of petition P.228-07.
7. Once a favorable decision is made by the Inter-American Commission on Human Rights, journalist Dogliani will desist from prosecution of this matter before the Commission on the facts in this case, and will refrain from any further domestic or international action stemming from same, except for the motion to overturn the conviction mentioned in paragraph 5.

8. The State and the journalist agree to cooperate to facilitate the public dissemination of the main points of the agreement reached. The Ministry of Foreign Affairs shall issue a press release, after signature of this agreement, outlining the essential points set forth herein.

#### **IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

15. The procedure set forth in Articles 48(1)(f) and 49 of the American Convention has as its purpose “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Acceptance of such a procedure is a manifestation of good faith on the part of the State to fulfill the purposes and objectives of the American Convention by virtue of the principle of *pacta sunt servanda*, whereby States must fulfill in good faith the obligations they undertake in treaties. The friendly settlement procedure set forth in the American Convention allows individual cases to be closed in a non-contentious way, and in cases affecting an array of countries, it has proven to be an important tool for resolving cases, which may be used by both parties.

16. On this occasion, as regards points 1 and 2 of the Agreement, the IACHR takes note that the State has acknowledged responsibility, and values the legislative reforms instituted by the State through enactment of Law No. 18.515 of June 26, 2009. Said law eliminates sanctions for divulging opinions or information on public officials or regarding matters of public interest, except when the allegedly affected person can demonstrate the existence of *true malice*. Additionally, the law eliminated sanctions for offending or denigrating patriotic symbols or attacking the honor of foreign authorities. The new legislation indicates that international treaties on freedom of expression are guiding principles for the interpretation, application, and integration of civil, procedural, and criminal laws affecting this freedom, and it expressly recognizes the relevance of decisions and recommendations by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

17. Regarding the commitment to financially compensate the victim, the petitioners report that “this requirement has been met because [the Vice President of the Republic] Rodolfo Nin Novoa signed a resolution on December 9, 2009 which orders the following: ‘It is hereby ordered to pay the sum of US\$8,000 (eight thousand dollars, U.S.) as financial reparation to the journalist Carlos Dogliani in fulfillment of the friendly settlement agreement signed between the journalist and the Uruguayan State, pursuant to the petition lodged with the Inter-American Commission on Human Rights, No. P.228-07’.

18. As regards the commitment to publicly disseminate the “main points” of the agreement reached by the parties, the IACHR takes note that on September 18, 2009, the Press Office of the Ministry of Foreign Affairs issued Press Release No. 70/09 which generally stated the background of the case, the actions undertaken by the government, and that the parties had agreed to a friendly settlement.

19. The Inter-American Commission has closely followed developments in the friendly settlement agreement reached in this case. The Commission greatly appreciates the efforts made by the parties to reach this solution, and declares that it is compatible with the purpose and goals of the Convention.

#### **V. CONCLUSIONS**

20. Based on the foregoing considerations and by virtue of the procedure set forth in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties, and its satisfaction with the friendly settlement agreement attained in this case, founded on the purpose and goals of the American Convention.

21. By virtue 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 September 18, 2009.

2. To consider the aforementioned Agreement to be fulfilled.

3. To publish this report and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 16<sup>th</sup> 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, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.