

REPORT No. 17/10
CASE 12.536
FRIENDLY SETTLEMENT
RAQUEL NATALIA LAGUNAS
AND SERGIO SORBELLINI
ARGENTINA
March 16 2010

I. SUMMARY

1. On September 6, 2001, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission," or "IACHR") received a petition filed by Leandro Nicolás Lagunas, Graciela Lambert de Lagunas, and Irma Girolami de Sorbellini (hereinafter "the petitioners") against the Argentine Republic (hereinafter "Argentina" or "the State"), in relation to the death of their children Raquel Natalia Lagunas, 17 years of age, and Sergio Antonio Sorbellini, 19 years of age, in March 1989 in the Province of Río Negro in Argentina. The petitioners alleged that these facts tend to establish violations of the right to life, the right to judicial guarantees, the right to equality before the law, and the right to judicial protection, as set forth at Articles 4(1), 8(1), 24 and 25(1) of the American Convention on Human Rights (hereinafter "the Convention").

2. The petitioners argued that as of the discovery of their children's corpses, police activity was deployed in order to cover up the incident and do away with or distort the evidence. The petitioners made reference to a series of procedural irregularities as a result of which two persons were convicted, who later benefited from a declaration of nullity of the case against them due to procedural defects. They indicated that in the instant case, the Legislature had created a Special Commission to investigate the chain of cover-ups, as they were considered grave acts of public interest. They asserted that through the actions of that Commission, the bodies were exhumed, and it was verified that the judicially declared autopsies had never been performed, and that the police records and experts' were false.

3. This friendly settlement report, in keeping with Article 49 of the Convention and Article 40(5) of the Commission's Rules of Procedure, provides an outline of the facts alleged by the petitioners. In addition, it transcribes the friendly settlement agreement signed on November 19, 2007, for the first party, by Mr. Leandro Nicolás Lagunas, and Ms. Graciela Isabel Lambert de Lagunas and their lawyers, Ricardo Thompson and Ricardo Bugallo, in representation of the family of Raquel Lagunas; and for the second party, in representation of the Government of Río Negro, by the Secretary of Government María Nelly Meana García. In addition, it includes the text of a protocol of accession to the friendly settlement agreement signed on November 24, in representation of the next-of-kin of Sergio Sorbellini, by Ricardo Alberto Sorbellini, Irma Azucena Girolami de Sorbellini, and petitioner Sergio Carlos D'agnillo; and in representation of the Province of Río Negro, by the Secretary of Government María Nelly Meana García. In addition, the agreements signed by the parties are approved, and it is agreed to publish this report.

II. PROCESSING BY THE COMMISSION

4. On March 2, 2006, the IACHR approved Admissibility Report No. 14/06, by which it declared the petition admissible with respect to the alleged violations of Articles 4, 5, 8, 19, and 25 of the American Convention in relation to the general obligations enshrined in Articles 1 and 2 of that treaty. That report was transmitted to the parties in a communication of March 23, 2006, by which, according to Article 48(1)(f) of the American Convention and Article 37(4) of its Rules of Procedure, the IACHR made itself available to the parties to reach a friendly settlement. By communication of June 21, 2006, the petitioners expressed to the IACHR their interest in pursuing a friendly settlement.

5. In addition, the petitioner presented communications to the Commission on the following dates: May 22, 2006; June 2, 2006; July 5, 2006; August 8, 2006; March 15, 2007; August 20 and 21, 2007; November 28, 2008; December 9, 2008; and September 3, 2009.

6. Furthermore, the State presented written communications on the following dates: June 14, 2006; February 9, 2007; July 23, 2007; February 4, 2008; January 9, 2009; and September 3, 2009.

7. On December 6, 2006, during the working visit that the Commission made in Argentina, a working meeting was held between the parties at the offices of the Argentine Ministry of Foreign Affairs.

8. On February 4, 2008, the IACHR received a document from the Argentine Ministry of Foreign Affairs that contained the friendly settlement agreement, signed on November 19, 2007, for the first party, in representation of the family of Raquel Lagunas, by Mr. Leandro Nicolás Lagunas and Ms. Graciela Isabel Lambert de Lagunas and attorneys Ricardo Thompson and Ricardo Bugallo, and for the other party, the Government of Río Negro, by Secretary of Government María Nelly Meana García. In addition, the text of a protocol of accession to the friendly settlement agreement was received; it was signed on November 24, 2007, by Ricardo Alberto Sorbellini, Irma Azucena Girolami de Sorbellini, and attorney Sergio Carlos D'agnillo, in representation of the next-of-kin of Sergio Sorbellini; and for the Province of Río Negro, Secretary of Government María Nelly Meana García.

III. THE FACTS

9. The petitioners argued that on March 12, 1989, after lunchtime, their children Sergio Antonio Sorbellini and Raquel Natalia Lagunas went to the countryside on a tandem bicycle to look for grass for their rabbits. As they didn't return, their parents and family members began to look for them. According to the petitioners, on March 13, 1989, at mid-day, the victims' family members found Raquel Natalia Lagunas and Sergio Antonio Sorbellini, 17 and 19 years old respectively, killed by gunshot wounds, in Río Colorado, a small and isolated rural community in the province of Río Negro.

10. In addition, the petitioners indicated that as of the finding of the bodies, instead of an effective investigation being opened, police activity was deployed in order to cover up the act and do away with or distort the evidence. Specifically, the petitioners indicated the existence of the following irregularities in the first stage of the process: among other things, the place where the bodies were found was not secured; physical traces were not preserved at the crime scene; the underclothes of Raquel Lagunas were replaced; the expert ballistics examination by the expert Arriola was forged; the autopsies described by the physicians were not carried out; police officials had forged witness statements; several elements taken into custody by the police authorities had disappeared; reports on procedures followed had been forged. They asserted that these irregularities would be verified years later.

11. The petitioners also alleged that as regards these facts, the police had detained, first, Mario Oscar González, a minor, and days later Héctor Fabián Llavel and Raúl García, who had been accused based on a false expert ballistics exam of a weapon that the police had judicially attached. They asserted that the minor Oscar González and Mr. Raúl García had been convicted and sentenced to life in prison, while Mr. Llavel had been acquitted. According to the petitioners, that decision was appealed by the defendants and the Superior Court of Justice of the Province had declared the trial null and void because of procedural defects and due to the lack of evidence. Subsequently, the investigative judge, Mr. Juan Rodolfo Torres, released them.

12. According to the petitioners, the case was characterized by judicial inaction, accordingly in April 1994 the alleged victims' mothers had requested, by public communiqués, that the son of a provincial legislator and another individual be investigated.

13. The petitioners added that the victims' next-of-kin, with the support of their neighbors, had continued making public statements. They indicated that in 1995, the incoming governor, Mr. Verani, had constituted a police commission under the new judge in the matter, Mr. Torres, in order to initiate a genuine investigation into the facts of this case. Nonetheless, the petitioners alleged that the judge in the case had refused to judicially receive what was produced by that police commission.

14. According to the petitioners, in March 1997, in response to popular demonstrations, the Legislature created a Special Commission made up of several legislators to investigate the chain of cover-ups, for considering them grave incidents of public interest.

15. The petitioner also affirmed that in September 1997, as a result of the reactivation of the case with the creation of the Special Commission, the bodies were exhumed; the exhumation had been requested by the victims several times before that time before the judge and prosecutor in the case in order to clarify the cause of the youths' deaths. According to the petitioners, as a result of the exhumation, it was verified that the judicially-ordered autopsies were never done, that the bullets supposedly extracted from the bodies did not match the weapon that was supposedly used in the crime, and that the testimonies of the police and experts that had been incorporated into the record were false. In addition, the petitioners indicated that it was found that the victims' clothing had disappeared.

16. In addition, the petitioners affirmed that thanks to the new impetus of the Special Commission, which had instituted a program of rewards and protected witnesses, new evidence and testimony were incorporated. Among the new witnesses were the retired police, aiders and abettors, and persons accused of similar crimes. According to the petitioners, the judicial branch initiated only the trial for false testimony of police and experts involved, convicting only the ballistics expert to two years suspension and disqualification. They added that Investigative Judge Fernando Bajos had been removed by impeachment. Nonetheless, according to the petitioners, no criminal proceedings were instituted against him or the other officials allegedly responsible, even though facts were shown that would constitute various criminal offenses. They argued that several cases were opened in relation to this investigation, but that most have not continued.

17. The petitioners attached the final report of the Legislative Commission created for the case by Law No. 3088, of December 22, 1997. The report describes the most enigmatic and complex unresolved cases in the history of the province. The report defines the police and judicial investigation as defective and points to the lack of initiative of the prosecutorial authorities (Ministerio Público Fiscal). In addition, the report indicates that police physician Andrés Ferreras had recognized, before the Commission, that he did not perform the routine operation entailed in an autopsy nor the necessary complementary studies, although the main record includes his description of the autopsy. The report also indicates that the accused were convicted based on the expert ballistics report by Julio César Arriola, yet subsequent expert reports had determined that the weapon associated with the minor who was convicted was not the homicidal weapon, as it did not have the characteristics of the projectiles extracted from the victims.

18. That report, provided by the petitioners, cites a list of 16 irregularities in the police investigation, among them the deficient inspection of the place they were found, the failure to secure the place they were found, the failure to actuarially incorporate the information in evidence, the replacement and loss of the victims' personal effects, the failure to seek out testimony or conduct searches of premises, the drawing up of procedural reports at police headquarters, the excessive use of a witness tied to the police force, the alleged falsification of the signature in a police report, the irregular judicial attachment of a vehicle linked to the accused, etc. The report also indicates that all these irregularities appear from the record that the investigative judges and the judges who issue the verdict had in hand. The report also notes serious shortcomings in the action of the judge and the prosecutor.

19. Based on the report by the Legislative Commission, cases were opened for the crime of criminal conspiracy against the police who were involved during the investigative stage. Nonetheless, the petitioners reported that on December 3, 2003, charges were dismissed against all the police agents accused of criminal conspiracy in a series of related criminal acts with double aggravated homicide in relation to the homicide of their children. Subsequently, in the context of the friendly settlement process that had begun, the petitioners asked the Government to initiate administrative inquests against the police involved, yet they affirm that contradictorily, the Government had granted those officers retirement with their rank and the benefits they had attained.

20. The petitioners clarified that they have been allowed to participate as private accusers only in the principal case, but not in the multitude of related cases that are under way to investigate and punish the police and judicial cover-up in this case. They alleged having pursued every action available to them, and to have collaborated intensely in the investigation.

21. According to the petitioners, the facts would suggest that the crime against their children was linked to political, police, and judicial officials. They added that dozens of crimes with similar characteristics had taken place in the province of Río Negro during the same period, with the same persons involved in many cases. They said that despite the time elapsed, both the main case involving the death of the youths Lagunas and Sorbellini, and the various related cases for the alleged cover-up, continued to be in the investigative stage and to this day the case remain in impunity.

22. The petitioners asked that Argentina be declared responsible for violations of the rights to life, judicial guarantees, equality before the law, and judicial protection, as established by Articles 4(1), 8(1), 24, and 25(1) of the Convention.

IV. FRIENDLY SETTLEMENT

23. On November 19, 2007, the next-of-kin of Raquel Lagunas, Mr. Leandro Nicolás Lagunas and Ms. Graciela Isabel Lambert de Lagunas, and petitioners Ricardo Thompson and Ricardo Bugallo; and the Government of Río Negro represented by the Secretary of Government María Nelly Meana García, signed the following agreement:

In the city of Viedma, province of Río Negro, in the context of case No. 12,536 of the registry of the Inter-American Commission on Human Rights (Lagunas and Sorbellini): the petitioners and the Government of the Province of Río Negro meet. The family of Raquel Lagunas is represented by Mr. Leandro Nicolás Lagunas and Ms. Graciela Isabel Lambert de Lagunas, with the legal representation of Messrs. Ricardo Thompson and Roberto Bugallo. The Province of Río Negro is represented by the Secretary of Government, Mary Nelly Meana García. With the deliberations concluded, the parties state that they have reached a friendly settlement of the petition, whose content is developed below:

I. Background

1. The petition was received at the IACHR on September 6, 2001, and its pertinent parts were transmitted to the State on October 12, 2001. In that context, the petitioners argued that on March 12, 1989, after lunchtime, their children Sergio Antonio Sorbellini and Raquel Natalia Lagunas went to the countryside on a tandem bicycle to look for grass for their rabbits. As they didn't return, their parents and family members began to look for them. On March 13, 1989, at mid-day, the victims' family members found Raquel Natalia Lagunas and Sergio Antonio Sorbellini, 17 and 19 years old respectively, killed by gunshot wounds, in Río Colorado, a small and isolated rural community in the Province of Río Negro.

2. In that regard, the petitioners indicated that as of the finding of the bodies, instead of an effective investigation being opened, police activity was deployed in order to cover up the act and do away with or distort the evidence. Specifically, the petitioners indicated the existence of the following irregularities in the first stage of the process. Subsequently, according to the petitioners, the case was characterized by judicial inaction, accordingly in April 1994 the alleged victims' mothers had requested, by public communiqués, that the son of a provincial legislator and another individual be investigated. A few days after this communiqué, the latter apparently committed suicide.

3. In addition, the complainants state that in March 1997, in response to popular demonstrations, the Legislature created a Special Commission made up of several legislators to investigate the chain of cover-ups, for considering them grave incidents of public interest. The petitioners allege that thanks to the new impetus of the Special Commission, new evidence and testimony was incorporated to the record which, nonetheless, did not contribute to completely clarify the case; only the ballistics expert was sentenced to a two-year suspension and disqualification, and the investigative judge who was involved in the matter was removed, which is why they invoked the protection of the inter-American system.

4. In August 2002, the IACHR made a working visit to Argentina during which the delegation travelled to Río Negro to meet with the authorities and the petitioners in this and other petitions. Since then, in the instant case a friendly settlement process was formally pursued by the parties, who on several occasions met to move that initiative forward.

5. Without prejudice to that, on March 2, 2006, the Commission declared the case admissible and made itself available to the parties to pursue a friendly settlement. In that context, the State reiterated its willingness to continue the dialogue, which was accepted by the parties. The conversations were conducted under the auspices of the Inter-American Commission and the National Government, leading to this definitive agreement.

II. The deficiencies of the investigation into the facts. The responsibility of the Province of Río Negro.

1. Taking into account Report No. 94/06 adopted by the Inter-American Commission on Human Rights by which the case was declared admissible, the documents that appear in the record in that case, the results of the work of the Special Commission of the Legislature of the Province of Río Negro, and other relevant considerations produced during the process, the Government of the Province of Río Negro recognizes its responsibility for the deficiencies in the investigation into the facts alleged, as well as their legal consequences.

2. Mindful of this, the Government of the Province of Río Negro undertakes to adopt measures for integral reparation, and non-repetition, as per the following.

III. Measures to be adopted

A. Measures of non-pecuniary reparation

1. The Government of the Province of Río Negro undertakes, fully respecting the separation of powers, to make its best efforts to continue the investigations of the case to the final consequences. With that purpose, and as certified in the act of November 8, 2007, the Government of the Province of Río Negro and the petitioners agree to constitute a Commission for Follow-up (Comisión de Seguimiento) for the purposes of monitoring progress in the judicial case in order to prepare an assessment of the case to evaluate the steps to be

taken, to which the federal government will be invited to participate. The parties shall agree upon the composition of that commission.

2. In addition, and as committed to in point 1(b) of the act of December 6, 2006, it is noted for the record that the Government of the Province of Río Negro has proceeded to implement a police overseer ("Fiscal en Comisaría") in the city of Río Colorado, who shall be named through a public competitive process.

3. In terms of vindicating the good name and honor of Raquel Natalia Lagunas and Sergio Sorbellini, it is noted for the record that the Government of the Province of Río Negro proceeded to publish the public declaration agreed upon in point 2 of the act of September 30, 2002.

4. As another measure of satisfaction, it is stated for the record that point 3 of the act of September 30, 2002 has been carried out; pursuant to it, the Deliberating Council of the city of Río Colorado designated a plaza in that city with the name of Raquel Lagunas and Sergio Sorbellini.

B. Measures of pecuniary reparation

1. The Government of the Province of Río Negro undertakes to compensate the family of each of the victims with the sum of US\$100,000 respectively. That compensation shall be paid in keeping with the following schedule: (a) Lagunas family: 60% of the total, plus 20% for the professional fees of the attorneys (Messrs. Thompson, Espeche, and Bugallo), which shall be paid in this act, by check No. 16664764 of the Banco Patagonia for the sum of one hundred ninety thousand eight hundred pesos (\$190,800), to the order of Leandro Nicolás Lagunas, and check No. 16664762 of the Banco Patagonia to the order of Mr. Ricardo Thompson for the sum of sixty-two thousand three hundred twenty-eight pesos (\$62,328); the tax on gross income has been withheld from the attorneys in the amount of one thousand two hundred seventy-two pesos (\$1,272), for which they receive a receipt. The remaining sum shall be paid in two equal and consecutive installments whose due dates shall be December 10, 2007 and January 10, 2008, respectively. Mr. Leandro Lagunas receives the corresponding amount in representation of the family of Raquel Lagunas and Mr. Ricardo Thompson in representation of the attorneys. (b) Sorbellini family: The Government of the Province of Río Negro undertakes to include the reparation due in the 2008 budget, and to pay it in full before June 30, 2008.

2. The amounts recognized in this agreement as payment to the victims' families shall be unattachable and exempt from the payment of any tax, contribution, or assessments already existing or to be established.

3. The petitioners waive, definitively and irrevocably, initiating any pecuniary claim against the Government of the Province of Río Negro and/or against the Federal Government in relation to the instant case.

VI. Conclusions.

1. The Government of the Province of Río Negro and the petitioners agree to forward this agreement to the Ministry of Foreign Affairs, International Commerce, and Worship, for the purposes of its ratification in the international jurisdiction, asking that it be submitted to the Inter-American Commission on Human Rights for the purposes set forth in Article 49 of the American Convention on Human Rights. In that sense, it is noted for the record that prior to its being forward to the Foreign Ministry of Argentina, this agreement must be approved, in keeping with corresponding legal provisions, by the Province of Río Negro.

2. Finally, the Government of the Province of Río Negro and the petitioners agree to keep open a space for dialogue for the purpose of following up on the implementation of the commitments herein assumed.

3. As the Sorbellini family is not present, this agreement shall be made available to them for their subsequent accession.

24. On November 24, 2007, the next-of-kin of Sergio Sorbellini, represented by Ricardo Alberto Sorbellini, Irma Azucena Girolami de Sorbellini, and their attorney Sergio Carlos D'agnillo; and the

Government of the Province of Río Negro, represented by the Secretary of Government Mary Nelly Meana García, signed an additional protocol to the friendly settlement agreement on November 19, 2009, with the following text:

I. Accession of the family of Sergio Sorbellini to the Friendly Settlement Agreement of November 19, 2007. In this regard, the petitioners state that, in the capacity indicated in the heading, they accede in all its terms and conditions to the friendly settlement agreement signed November 19, 2007 by the representatives of the family of Raquel Lagunas and the Government of the Province of Río Negro, a copy of which they receive. In addition, Mr. Dagnillo, in his capacity as the attorney representing the family of Sergio Sorbellini, accedes in all its terms and conditions to said friendly settlement agreement.

II. Conclusions

In consideration of the accession stated above, the petitioners and the Government of the Province of Río Negro agree to forward this additional protocol to the Ministry of Foreign Affairs, International Commerce, and Worship, for the purposes of having it attached, as an integral part thereof, to the friendly settlement agreement signed on November 19, 2007, requesting, consequently, its ratification in the international jurisdiction and that it be submitted to the Inter-American Commission on Human Rights for the purposes set forth in Article 49 of the American Convention on Human Rights. In that sense, it is noted for the record that it must first be forwarded to the Argentine Foreign Ministry; this agreement shall be approved in keeping with the corresponding legal provisions by the Province of Río Negro.

25. On December 7, 2007, the Government of the Province of Río Negro published decree 1397, in which it ratified both the friendly settlement agreement and its additional protocol.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

26. The IACHR reiterates that in keeping with Articles 48(1)(f) and 49 of the Convention, this procedure has as its aim "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The acceptance of this procedure is an expression of the good faith of the State in carrying out the purposes and objectives of the Convention, pursuant to the principle of *pacta sunt servanda*. In addition, it wishes to reiterate that the friendly settlement procedure provided for in the Convention allows for the termination of individual cases in a non-contentious manner, and has proven, in cases related to various countries, to offer an important and effective solution that may be used by both parties.

27. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case. The Commission highly values the efforts made by the parties to reach this settlement and declares that it is compatible with the object and purpose of the Convention.

28. In this regard, the Commission concludes that in accordance with the case file, paragraphs A.3; A.4 and B.1 of the Friendly Settlement Agreement have been fulfilled. In addition, in relation to paragraph A.2., the Commission observes that on March 12, 2009, authorities of the Río Negro Province published a contest for the post of prosecutor ascribed to the Río Colorado Police Station, and that the list of applicants was published on May 11, 2009 in the Official Bulletin 4.723. The IACHR will follow up on the pending issues, in particular on the investigation and punishment of those responsible.

VII. CONCLUSIONS

29. Based on the foregoing considerations, and in consideration of the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties to achieve the friendly settlement agreement in the instant case based on the object and purpose of the American Convention.

30. 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 November 19, 2006, and its additional protocol of November 24, 2006.

2. To continue to follow-up on and supervise each and every one of the points of the friendly settlement agreement, and in this context to remind the parties of their commitment to inform the IACHR periodically about compliance with this friendly settlement agreement.

3. To make this report public and to 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 Sílvia Guillén, Rodrigo Escobar Gil, and José de Jesús Orozco Henríquez, members of the Commission.