

REPORT No. 161/10
PETITION 4554-02
FRIENDLY SETTLEMENT
VALERIO OSCAR CASTILLO BÁEZ
ARGENTINA
November 1, 2010

I. SUMMARY

1. On November 21, 2002, the Inter-American Commission on Human Rights (hereinafter the "Commission" or the IACHR, received a petition presented by Valerio Oscar Castillo Báez, Pablo Gabriel Salinas Cavalotti, and Rosa Irene Viudez (hereinafter "the petitioners") against the Republic of Argentina (hereinafter "the State" or "Argentina") in connection with the political persecution of Valerio Oscar Castillo Báez. The petitioners allege that the facts contained therein indicate that the State violated their right to a fair trial, right to property, right to equal protection and right to judicial protection, under Articles 8, 21, 24 and 25, respectively, of the Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. According to the petitioners, during the military dictatorship the alleged victim was detained and held under arrest from May 5, 1980 to April 13, 1982, accused under federal law of infringing Law No. 20,840 whereby it is a crime to participate in political parties considered to be subversive, and was absolved of the charges on April 13, by Federal Court No. 1 of Mendoza. The petitioners also requested, without success, that the competent authorities compensate Valerio Oscar Castillo Báez for damages in view of the fact that Law 24,043 provides an indemnity must be paid to anyone who was placed under the authority of the National Executive Power or deprived of their freedom under orders issued by military courts or authorities. The State presented no observations on this case.

3. Pursuant to Article 49 of the Convention and Article 40(5) of the Rules of Procedure of the Commission, this friendly settlement report contains a summary of the facts alleged by the petitioners and a transcription of the friendly solution agreement signed on October 2, 2008 by Dr. Pablo Gabriel Salinas on behalf of the petitioners; and by the Under-Secretary for the Protection of Human Rights, Dr. Luis Hipólito Alen, and the Advisor to the Ministry of Foreign Affairs, International Trade and Worship, Dr. Jorge Nelson Cardozo, on behalf of the Government of the Republic of Argentina. Also included in the report is a copy of Decree N^o 399/09 approving the friendly solution signed on April 27, 2009 by the President of the Republic of Argentina, Dr. Cristina Fernández de Kirchner, the Minister of Foreign Affairs, International Trade and Worship, Dr. Jorge E. Taiana, and the Minister of Justice, Security and Human Rights, Dr. Aníbal D. Fernández. Finally, the agreement signed between the parties is approved and the parties agree to the publication of this report.

II. PROCESSING BY THE IACHR

4. Processing of the petition regarding the presumed violations of Articles 8, 21, 24 and 25 of the American Convention, in relation to Article 1(1) and Article 2 of said instrument, commenced on May 2, 2006. Pursuant to the provisions of Article 30 of its Rules, the IACHR allowed the State a period of two months to present its observations.

5. The petitioners submitted written communications to the Commission on the following dates: December 18, 2003; July 21, 2004; and February 16, 2006.

6. The State submitted written its communications on the following dates: July 5, 2006; August 7, 2006; and June 4, 2009.

7. On June 19, 2009, the IACHR received a document from the Ministry of Foreign Affairs of the Republic of Argentina containing the friendly settlement agreement signed by the parties on October 2, 2008. Dr. Pablo Gabriel Salinas signed the agreement on behalf of the petitioners; and the Under-

Secretary for the Protection of Human Rights, Dr. Luis Hipólito Alen, and the Advisor to the Ministry of Foreign Affairs, International Trade and Worship, Dr. Jorge Nelson Cardozo, signed it on behalf of the Republic of Argentina. Said communication also includes a copy of Decree N° 399/09 dated April 27, 2009 signed by the President of the Republic of Argentina, Dr. Cristina Fernández de Kirchner, the Minister of Foreign Affairs, International Trade and Worship, Dr Jorge E. Taiana, and the Minister of Justice, Security and Human Rights, Dr Aníbal D. Fernández, approving the friendly settlement.

III. THE FACTS

8. The petitioners alleged that Valerio Oscar Castillo Báez was arrested on May 5, 1980 by personnel from the Eight Infantry Brigade of Montaña and held at the Investigation Division of Mendoza. They allege that on May 30, 1980, as a result of pressure by the family, the alleged victim was transferred to Mendoza prison, held there without being informed of the charges against him, and was allowed no contact with his relatives or an attorney.

9. The petitioners also pointed out that on July 30, 1980, the presumed victim and other arrested persons were brought before Federal Court N° 1 of Mendoza accused of infringing Law 20,840, whereby it is a crime to belong to political parties considered to be subversive. In this case, the alleged victim was a member of the Communist Party. The Federal Court issued a preventive prison order and brought cases suits against the persons detained. Mr. Castillo was absolved in both cases and released on April 13, 1982.

10. The petitioners allege that after democracy was restored in Argentina, under Law 24,906 the alleged victim applied for the benefit of Law 24,043 which provided for financial compensation for persons placed under the authority of the National Executive Power during the state of siege or deprived of their freedom under orders issued by military courts or authorities.

11. The petitioners point out that in February 1999, through Resolution 12/99 of the Ministry of the Interior, the alleged victim was granted an indemnity corresponding to the eighty-six days that elapsed from the date of his detention and until he was taken to Mendoza Federal Court N° 1. However, the Ministry refused to compensate the victim for the rest of the time during which Mr. Castillo was detained, arguing that a civil court had issued a preventive prison order under a regular proceeding.

12. The petitioners also pointed out that the alleged victim then filed a direct appeal with the National Chamber of Federal Administrative Appeals, against the Ministry of the Interior's resolution, under No. 677/00. On September 5, 2000 the National Chamber rejected the appeal *in limine*, arguing that the alleged victim was only held by the military authorities until July 30, 1980 and since his records were transferred to Federal Court N° 1 his rights were restored.

13. The petitioners point out that the National Chamber did not take into account that the alleged victim was imprisoned from May 5, 1980 until April 13, 1982, i.e. for a period of 712 days.

14. They further stated that other members of the Communist Party who were held for the same reason obtained the benefit provided for in Law 24,043. They allege that the members of the Communist Party detained along with the alleged victim were deprived of their freedom for a similar length of time and were tried for the same activities before being placed under the order of Federal Court N° 1. The petitioners point out that Mr. Castillo was the only member of the Communist Party to have been denied the benefits of Law 24,043. They further state that despite the point argued, his request was denied by the Federal Court of Appeal. Moreover, for strictly formal reasons and without conducting an in-depth review, the Supreme Court of the Nation also rejected his motion for reconsideration of dismissal of appeal.

15. The petitioners allege that the State appears to have acted arbitrarily in denying the presumed victim recognition of the compensation requested, which is why they sustain that Mr. Castillo was discriminated against and deprived of the benefits of the law to which he is entitled.

16. Lastly, the petitioners requested that the Argentine State be declared responsible for violating the right to a fair trial, right to property, right to equal protection, and right to judicial protection, as provided for in Articles 8, 21, 24 and 25 of the American Convention on Human Rights.

IV. FRIENDLY SETTLEMENT

17. The agreement was signed on October 2, 2008 by Dr. Pablo Gabriel Salinas on behalf of the petitioners; and by the Under-Secretary for the Protection of Human Rights, Dr. Luis Hipólito Alen, and the Advisor to the Ministry of Foreign Affairs, International Trade and Worship, Dr. Jorge Nelson Cardozo, on behalf of the Republic of Argentina.

FRIENDLY SETTLEMENT AGREEMENT

The parties in petition No. P-4554-02 of the IACHR Registry - Valerio Oscar Castillo Báez- the petitioners, represented in this proceeding by Dr. Pablo Gabriel Salinas, and the Government of the Argentine Republic, in its capacity as State party to the American Convention on Human Rights, hereinafter the "Convention," acting under express mandate of Articles 99(11) and 126 of the Constitution of the Argentine Nation, represented by the Under-Secretary for the Protection of Human Rights of the Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Nation, Mr. Luis Hipólito Alen, and by the Advisor to the Cabinet of the Ministry of Foreign Affairs, Comercio Internacional de Derechos Humanos inform the illustrious Inter-American Commission on Human Rights that a friendly settlement on the petition has been reached whose contents are as follows and that given the consensus reached it should be accepted and the resulting report provided for in Article 49 of the Convention should be adopted.

I. Background

On June 24, 1992, the claimants filed a petition on behalf of Mr. Valerio Castillo Báez against the Argentine State. Within that framework they stated that during the last military government Mr. Castillo Báez was detained from May 5, 1980 until April 13, 1982, accused before a federal court of infringing Law No. 20,840, which was then in force but has since been repealed. Much later Mr. Castillo Báez made a request to the competent authorities for the indemnity enshrined in Law 24,043, on the understanding that the situation suffered by him was equivalent to the cases specifically enshrined therein. However, his request was denied on the grounds that Mr. Castillo Báez's case did not appear to meet the provisions of the law, taking into consideration that he had been tried and sentenced under federal law.

II. Friendly Settlement Process

After evaluating the petition the Commission decided to serve notice to the Argentine State pursuant to the provisions of Article 48 of the Inter-American Convention on Human Rights. Having reviewed Mr. Castillo Báez's case and without this implying recognition of the *de facto* and *de jure* matters stated in the petition, the Argentine State notified the IACHR of its willingness to offer an opportunity to look into the possibility of a friendly settlement.

Subsequently the representative of the petitioner delivered a writ to the Ministry of Foreign Affairs clarifying his expectations regarding the process. In that vein various working meetings were held and it was ascertained that the proof provided in the petition reveals, *prima facie*, that Mr. Castillo was detained between May 5, 1980 and April 13, 1982 within the framework of case No. 72,967 D under the heading "Prosecutor c/ Berlanga Aurelio et al. and its appendices and annexes No. 72.968-D and No. 73.128-D which will be filed with Federal Court of First Instance No. 1 of Mendoza.

In that respect, although the petitioner's detention was due to a decision issued by judicial authorities, whereby the normative basis justifying it was excluded from the provisions of Law 24,043, it is based on the provisions of Law 20,840, "Law on National Security, Punishments for subversive activities," which was notoriously used by the military dictatorship to judicialize the persecution of its political opponents. It was precisely that circumstance that, once the Rule of Law was restored, led the Argentine Congress through Law 23,077, to repeal Articles 1 to 5 of that law. The Argentine State's reparations policy on State terrorism is based on the provisions of international law whereby States must respect and guarantee the unrestricted and effective enjoyment of human rights. Thus, if human rights are infringed, the State must do everything in its power to investigate the facts, punish those responsible, compensate the victim properly and take

steps to prevent a recurrence. So it was precisely a friendly settlement agreement reached through the Commission of Human Rights in Report 28/92, and the Inter-American Court of Human Rights in the case "Birt et al." that led to Decree 70/91 and subsequently to laws 24,043 and 24,411, which contained provisions aimed at obtaining reparations for all the victims of the last dictatorship. However, there are certain scenarios such as the one presented today to the Inter-American System for the Protection of Human Rights, for which there is no provision for obtaining compensation from the State. As indicated by the Inter-American Commission on Human Rights in Report 28/92 and the Inter-American Court of Human Rights in the cases "Barrios Altos" and "Bulacio", the States have a legal duty to provide adequate compensation to the victims of human rights violations. It is, moreover, a peacefully accepted principle of international law that a State may not invoke the provisions of its internal law to justify its failure to perform an international obligation. From that point of view the State considers Mr. Valerio Oscar Báez a victim of political persecution by the military dictatorship that ruled the country with an iron fist from March 24, 1976 to December 10, 1983 by applying a legal provision whose sole purpose was to make any opposition activity a crime, in flagrant violation of the rights and guarantees enshrined in the Convention on Human Rights. Taking this into consideration and in compliance with the international obligations in the field of human rights, the Argentine State considers that the petitioner is entitled to be adequately compensated for the violations of his rights.

III. Measures to be adopted

1. The parties hereby agree that Mr. Valerio Oscar Castillo Báez should be granted monetary reparation in accordance with the scheme envisaged in Law 24,043, for the whole of the period during which he was detained and which is not indemnifiable within the framework of file MI No. 329.637/92. The administrative procedure is initiated by filing a complaint with the Secretariat of Human Rights of the Ministry of Justice and Human Rights of the Nation, pursuant to the provisions of said law regarding competence in such matters; the Secretariat must then take the necessary steps to certify exactly how long Mr. Castillo was held under detention under Law 20,840.

2. The State also undertakes to prepare, through its Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Nation, a draft amendment to Law 24,043 in order to include, under conditions deemed appropriate, cases in which a person is deprived of his freedom in accordance with the law. The State also undertakes to make every effort to remit it to the Argentine Congress as soon as possible.

3. The petitioners definitively and irrevocably renounce their right to file any other claim of any kind against the national State, in connection with this case.

IV. Petition

In signing this agreement, the Government of the Argentine Republic and the Petitioners express their complete agreement with its content and scope and mutually appreciate the good will evidenced in the negotiation process. To that effect they hereby place on record that this agreement must be approved through a Decree by the National Executive Branch, following which the Inter-American Commission on Human Rights shall be asked to ratify the friendly settlement achieved by adopting the report envisaged in Article 49 of the American Convention on Human Rights.

18. On April 27, 2009, the Government of the Argentine Republic published Decree N° 399/09 ratifying the friendly settlement agreement.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

19. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the Convention, the objective of this procedure is to "reach a friendly settlement on the matter, based on respect for the human rights established in the Convention." The State's acceptance to conduct this procedure reflects its willingness to fulfill the purposes and objectives of the Convention in good faith, by virtue of the principle of *pacta sunt servanda*. The Commission also wishes to reiterate that the friendly settlement procedure enshrined in the Convention allows individual cases to be concluded in a non-contentious manner, and in different cases in different countries it has proven to be an important and effective means for both parties to settle disputes.

20. The Inter-American Commission has followed closely the development of the friendly settlement reached in this case. The Commission fully appreciates the efforts of the parties to reach this agreement and, at the request of the State, declares that it is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

21. Based on the foregoing considerations and in conformity with the procedures set forth in Articles 48 (1) (f) and 49 of the American Convention, the Commission once again wishes to express its most sincere thanks to the parties for their efforts, as well as its satisfaction that the friendly settlement agreement reached in this case is consistent with the objective and purpose of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on October 2, 2008.
2. To continue to follow up and monitor each and every one of the points of the friendly settlement agreement so as to remind the parties of their commitment to inform the IACHR periodically about compliance with this friendly settlement agreement.
3. To publish this report and include it in its annual report to the General Assembly.

Done and signed in the city of Washington, D.C., on November 1st, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Members of the Commission.