

REPORT No. 20/11
CASE 11.708
FRIENDLY SETTLEMENT
ANÍBAL ACOSTA ET AL.
ARGENTINA
March 23, 2011

I. SUMMARY

1. On February 27, 1996, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition presented by attorney Rodolfo M. Ojea Quintana - later Mr. Tomás Ojea Quintana joined as a petitioner- (hereinafter “the petitioners”), which alleged violation by the Argentine Republic (hereinafter “the State” or “the Argentine State”) of Articles 8, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in connection with Article 1.1 of that instrument, to the detriment of Mr. Aníbal Acosta, Mr. Ricardo Luis Hirsch, and Mr. Julio César Urien (hereinafter “the alleged victims”)¹.

2. The petitioners stated that the alleged victims were members of the military personnel of the School of Mechanics of the Argentine Navy, serving as officers, with the rank of sea cadets, and, because they had participated, on November 17, 1972, in the group that promoted the return of former constitutional president Juan Domingo Perón, were prosecuted in a military trial. Nevertheless, once constitutional order was restored in Argentina, the Congress adopted an amnesty act in 1973, which covered the actions attributed to the alleged victims and closed the summary military proceeding in which they were defendants, with no verdict reached. The petitioners added that, despite this, the Executive, by decree of July 1974, ordered the compulsory discharge of the alleged victims, on the basis of the 1972 charges, for which they had already been amnestied. The petitioners add that the alleged victims requested that this administrative ruling be vacated, which motion was denied despite jurisprudence on an identical case, and that the courts had rejected their claims on procedural grounds without ruling on the merits.

3. This report on friendly settlement, as established in Article 49 of the Convention and in Article 40.5 of the Rules of Procedure of the Commission, provides a summary of the petitioners’ allegations and a transcript of the friendly settlement agreement, signed on April 21, 2010, by the petitioner, Dr. Tomás Ojea Quintana, and by the Argentine Republic, represented by Dr. Luis H. ALEN, Assistant National Secretary for the Protection of Human Rights, Dr. Andrea GUALDE, National Director of Legal Affairs in the area of Human Rights, Dr. Jorge Nelson CARDOZO, Cabinet Adviser to the FOREIGN MINISTER, Minister Eduardo ACEVEDO, in charge of the General Directorate of Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, and Dr. A. Javier SALGADO, Director of Human Rights (International Contentious Matters) of the Ministry of Foreign Affairs, International Trade, and Worship. In addition, the agreement signed by the parties is approved, and it is agreed to publish this report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On February 27, 1996, the petition in question was received. On March 28 of that year, the petition was forwarded to the State, which was given a deadline of 90 days to submit such information as it considered pertinent. The State requested an extension of 30 days, which was granted by the Commission in a communication of July 26, 1996, and another extension for an equal period of time, which was granted on August 23 of the same year. The State sent its reply in a note dated November 29, 1996.

5. In a communication dated July 16, 1997, the Commission placed itself at the disposal of the parties for purposes of reaching a friendly settlement of the matter, in keeping with Article 48.1.f of the

¹ On December 10, 2003, Mr. Mario Actis joined the petition as an alleged victim.

American Convention and Article 45, (1) and (2), of its Rules of Procedure in force at that time. In a communication received on October 6, 1997, and jointly signed by the petitioner and the then-Assistant Secretary of Human Rights of the Ministry of Foreign Affairs, the Commission was informed on the interest of both parties in reaching a friendly settlement.

6. The Commission received additional communications from the petitioners on June 25, 1997, April 9, 1998, March 12, 1999, and December 10, 2003, which were duly transmitted to the State.

7. On the other hand, the IACHR received additional communications from the State on August 20, 1998, and July 1, 1999, which were duly transmitted to the petitioners.

8. On April 27, 2010, the IACHR received from the State a copy of the friendly settlement agreement, signed April 21, 2010, by the petitioner, Dr. Tomás Ojea Quintana, and by the Argentine Republic, represented by Dr. Luis H. ALEN, Assistant National Secretary for the Protection of Human Rights, Dr. Andrea GUALDE, National Director of Legal Affairs in the area of Human Rights, Dr. Jorge Nelson CARDOZO, Cabinet Adviser to the FOREIGN MINISTER, Minister Eduardo ACEVEDO, in charge of the General Directorate of Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, and Dr. A. Javier SALGADO, Director of Human Rights (International Contentious Matters) of the Ministry of Foreign Affairs, International Trade, and Worship.

III. THE FACTS

9. The petitioners stated that in 1972, the alleged victims were members of the military personnel of the School of Mechanics of the Argentine Navy, serving as officers, with the rank of sea cadets.

10. Because they had participated, on November 17, 1972, in the group that promoted the return of former constitutional president Juan Domingo Perón, the alleged victims were prosecuted in a military trial. Nevertheless, once constitutional order was restored in Argentina, the Congress adopted an amnesty law for military crimes, Act N° 20,508, which covered the actions attributed to Mr. Acosta, Mr. Hirsch, and Mr. Urien, closing the summary military proceeding in which they were defendants, with no verdict reached.

11. The petitioners added that, despite this, the Executive, by decree 281/74 of July 24, 1974, ordered the compulsory discharge of the alleged victims, on the basis of the 1972 charges, for which they had already been amnestied.

12. The petitioners indicated that in April 1989, Mr. Hirsch, Mr. Acosta, Mr. Urien, and Mr. Actis lodged complaints against the Navy General Staff, requesting that the administrative action that had discharged them be vacated. The judge of first instance ordered their reinstatement into the Navy, with the rank of frigate lieutenant, retired, and ordered the payment of military retirement pay. The rulings were appealed by the State and the judges of second instance overturned the decision of the judge of first instance, on the grounds that action was tired-barred, despite the existence of a jurisprudential precedent concerning a person in identical circumstances. The representatives of the alleged victims then appealed to the Argentine Supreme Court of Justice by way of special remedies that also were rejected, as were the complaints lodged subsequently. The petitioners alleged that, in all the cases, the remedies were rejected on the grounds of procedural inadmissibility but no ruling was issued on the substance of the matter.

13. The petitioners maintained that the alleged victims had been subjected to violations of the rights protected by the Convention in Articles 8.1, 24, and 25, in relation to the obligation to respect, set forth in Article 1.1 of that treaty.

IV. FRIENDLY SETTLEMENT

14. On April 21, 2010, the petitioner, Dr. Tomás Ojea Quintana, and representatives of the Government of the Argentine Republic signed an agreement, the text of which provides as follows:

In the Autonomous City of Buenos Aires, Argentine Republic, on April 21, 2010, the parties to Case N° 11,708, ACOSTA, HIRSCH, URIEN, ACTIS vs. ARGENTINE REPUBLIC, registered by the Inter-American Commission on Human Rights, represented in this action by Dr. Tomás OJEA QUINTANA, for the PETITIONERS, and by Dr. Luis H. ALEN, Assistant National Secretary for the Protection of Human Rights, Dr. Andrea GUALDE, National Director of Legal Affairs in the area of Human Rights, Dr. Jorge Nelson CARDOZO, Cabinet Adviser to the FOREIGN MINISTER, Minister Eduardo ACEVEDO, in charge of the General Directorate of Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, and Dr. A. Javier SALGADO, Director of Human Rights (International Contentious Matters) of the Ministry of Foreign Affairs, International Trade, and Worship, for the Argentine State, in its capacity as state party to the American Convention on Human Rights, acting by express mandate of Article 99, section 11, of the Argentine Constitution, agree to enter into this FRIENDLY SETTLEMENT AGREEMENT, whose conclusion and content they have the honor to convey to the honorable INTER-AMERICAN COMMISSION ON HUMAN RIGHTS:

I. Background to the complaint to the Inter-American Commission on Human Rights

1. Mr. Julio URIEN, Mr. Aníbal Amilcar ACOSTA, and Mr. Ricardo Luis HIRSCH submitted a complaint against the Argentine State, alleging violation of the rights recognized in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, registered under no. 11,708. Mr. Mario ACTIS later joined the petition under the same terms.

2. As stated in the petition, in 1972, the petitioners served as inspectors at the Navy School of Mechanics, as subordinate officers, with the rank of sea cadets. On November 17 of that year, it was announced that the former constitutional president, General Juan Domingo Perón, who had been in exile since September 1955, would return to the Argentine Republic. The military government, headed by General Lieutenant Lanusse, prevented groups of citizens who intended to greet their leader from entering the Ezeiza International Airport. The popular fervor was not confined to civilians. Young members of the military, including the petitioners, launched an uprising that led to their arrest and subsequent prosecution under military jurisdiction on the charge of insurrection.

3. After constitutional order was restored in the Argentine Republic, in 1973, the Argentine Congress adopted Act No. 20,508, which declared an amnesty that covered the actions attributed to the petitioners. The Supreme Council of the Armed Forces decided to apply the provisions of that law to the petitioners, considering that the events had been politically motivated.

4. Although Act No. 20,508 prohibited the adoption of any decision stemming directly or indirectly from the actions to which the amnesty applied, the petitioners were given a compulsory discharge through Decree No. 281 on July 24, 1974, effective July 1 of that year.

5. From the attested copy of the petition, in the light of the historical events described, and from an analysis of the personnel files of the petitioners, it was inferred that the discharge of former sea cadets Urien, Acosta, Hirsch, and Actis was ordered for political reasons in the context of the institutional turmoil in which the Argentine nation was immersed.

II. Friendly settlement process

6. By note dated July 16, 1997, the Inter-American Commission on Human Rights, considering the requirements and characteristics of this case, placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, as provided in Article 48.1.f of the American Convention on Human Rights.

7. The representatives of the petitioners and of the Government of the Argentine Republic jointly conveyed to the Inter-American Commission on Human Rights their interest in that proposal and requested that an IACHR representative be appointed to help, through mediation, to reach a settlement based on respect for the human rights recognized in the American Convention.

8. In response to that request, the IACHR proposed that then-Commission member Robert K. Goldman assist in that process.

II. Measures adopted by the Argentine State

9. In the context of the agreed upon dialogue arrange the processing of this case, the Argentine State took a number of measures to address the situation reported by the petitioners.

10. Accordingly, 33 years after the events reported, on November 17, 2005, the Argentine president signed Decree No. 1404, providing as follows:

- A. To nullify the compulsory discharge of the petitioners from the Argentine Navy, as of July 1, 1974, and to reinstate them under compulsory retirement status;
- B. To grant the petitioners the rank of frigate lieutenant under effective compulsory retirement status, as of July 16, 1974;
- C. To grant the petitioners retirement pay based on 35 years of basic military service; and
- D. To recognize the pay due to the petitioners as of five years prior to the date of issuance of the decree.

11. In application of the national government policy on the preservation of the historical record, and as part of the reparations measures adopted by the Argentine State in this case, the signature of Decree No. 1404 was performed in a public ceremony attended by the Argentine president and the three chiefs of the armed forces, at which the petitioners recalled the historical events in the context of which the reported violations took place.

12. The parties agree that the measures ordered by Presidential Decree No. 1404 fully satisfy the claims lodged with the Inter-American Commission on Human Rights and express their full agreement with the content and scope of the settlement.

13. Therefore, the petitioners state that they renounce, definitively and irrevocably, any other claim of any nature against the Argentine State in relation to this case.

IV. Petition

14. The Government of the Argentine Republic and the petitioners sign this agreement and express their appreciation to one another for the good will shown in the negotiation process.

15. Accordingly, the parties request the Inter-American Commission on Human Rights to ratify this friendly settlement agreement by adopting the report stipulated in Article 49 of the American Convention on Human Rights.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

15. The IACHR reaffirms that, in accordance with Articles 48.1.f and 49 of the Convention, the purpose of this proceeding is "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The agreement to enter into this proceeding demonstrates the good faith of the State in pursuing the aims and objectives of the Convention, under the principle *pacta sunt servanda*. The Commission also wishes to reaffirm that the friendly settlement process envisioned in the Convention allows individual cases to be terminated in a non-contentious manner and has proven, in cases pertaining to various countries, to offer an important and effective avenue toward settlement that can be used by both parties.

16. The Commission highly values the efforts made by the parties to reach this settlement and declares that the settlement is compatible with the objective and aim of the Convention.

VI. CONCLUSIONS

17. On the basis of the foregoing considerations, and in accordance with the procedure envisioned 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 at the attainment of the friendly settlement agreement in this case, based on the objective and aim of the American Convention.

18. 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 April 21, 2010.
2. To continue to monitor and supervise each and every point of Presidential Decree no. 1404, set forth in this friendly settlement agreement, and, in that context, to remind the parties of their commitment to report periodically to the IACHR on the execution of those points.
3. To publish this report and to include it in its annual report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on March 23, 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, y María Silvia Guillén, Commissioners.