

REPORT No. 21/11
CASE 11.833
FRIENDLY SETTLEMENT
RICARDO DOMINGO MONTERISI
ARGENTINA
March 23, 2011

I. SUMMARY

1. On October 27, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition lodged by Mr. Ricardo Domingo Monterisi against the Republic of Argentina (hereinafter “Argentina” or “the State”). The petition refers to alleged *ex post facto* application of Law 24.144¹ in three court cases involving a dispute as to whether the Central Bank of the Republic of Argentina (hereinafter the “Central Bank” or “CBRA”) was obligated to pay his fees in his capacity as legal counsel of Banco Patagónico SA (hereinafter “Banco Patagonico”)², and to the alleged violation of his due process rights.

2. The petitioner claimed that he was retained by the Central Bank of the Republic of Argentina between 1981 and 1988 to provide professional services as legal counsel to Banco Patagonico, to represent it in all trials to come, because Banco Patagónico was in bankruptcy process. Accordingly, he brought three lawsuits seeking to have the Central Bank to be found obligated to pay his fees. He noted that the first one of these cases concluded on May 6 with a judgment of the Supreme Court of Justice of the Nation (hereinafter the “Supreme Court” or “Federal Supreme Court”). While the Supreme Court found in this judgment that the Central Bank was responsible for paying his fees, it also found that Law 24.144 could be applied retroactively in the enforcement of judgment stage of the proceedings, which would preclude him from receiving payment for his professional services. According to the petitioner, said law was also applied in the two other lawsuits, wherein the courts found that the Central Bank did not have to pay the fees. The petitioner argued that the principles of an impartial and independent judiciary were disregarded in these decisions.

3. In response, the State asserted that the petitioner was not the legal representative of the Central Bank but rather of Banco Patagonico. It also claimed that the petitioner did not exhaust domestic remedies because he did not file suit for enforcement of judgment to receive payment of his fees. It further argued that the court judgments did not apply Law 24.144 retroactively but rather when it was in effect. Additionally, it contended that there is no violation of the right to property, inasmuch as the petitioner has not proven loss of any benefit that he was entitled to and because Argentina put forth a reservation to Article 21 [of the American Convention on Human Rights], establishing that questions relating to the Government’s economic policy shall not be subject to review by an international tribunal. The State also asserted that the principles of impartiality and an independent judiciary were not violated.

4. Pursuant to the provisions of Article 49 of the Convention and Article 41(5) of the Rules of Procedure of the Commission, this friendly settlement report contains a summary of the facts alleged by the petitioner as well as a verbatim transcription of the friendly settlement agreement entered into on October 27, 2010 between the Republic of Argentina and the petitioner. Lastly, the agreement signed between the parties is approved and the parties agree to the publication of this report, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

¹ This law entered into force on September 23rd, 1992.

² This law is the Organic Charter of the Central Bank of the Republic of Argentina. Specifically, the petitioner alleges *ex post facto* application of Article 1, Chapter V, Article 19, section d), according to which: “it is prohibited for the monetary authority to make rediscounts, down payments or other credit transactions, except in the instances provided by Article 17, sections b) and c), or any ones that might arise in the transactions set forth in Article 18, section a).”

5. The petition was received by the IACHR on October 27, 1997 and the relevant portions were forwarded to the State on November 11, 1997. In communications on January 30, 1998 and April 20, 1998, the State requested extensions for submission of its reply, which was received on July 15, 1998 and was forwarded to the petitioner on July 27, 1998.

6. The petitioner submitted his remarks via communications on September 21, 1998, June 28, 1999, December 21, 1999 and October 22, 2001. The Commission forwarded the responses of the petitioner to the State by means of communications on September 28, 1998, July 14, 1999, January 3, 2000 and April 29, 2003. The petitioner submitted additional information on July 14, 1999 and September 6, 2004.

7. The State requested extensions on March 16, 2000, July 5, 2000, and August 15, 2000. The State submitted its remarks via communications on July 15, 1998, October 22, 1999 and September 17, 2001. The Commission forwarded said responses to the petitioner in communications on July 14, 1999 and October 17, 2001.

8. On May 7, 2009, the Commission requested up-to-date information from the petitioner and the State. On June 11, 2009, Argentina requested an extension, which was granted. On April 20, 2010, the State reported that the parties were discussing the possibility of engaging in talks aimed at reaching a friendly settlement. This position was confirmed by the petitioner in a note on May 28, 2010. The parties held a working meeting during the 140th Regular Period of Sessions of the IACHR, on October 27, 2010, when they entered into the friendly settlement agreement, which is the subject of this report.

III. THE FACTS

9. The petitioner contends that he was retained by the Central Bank of the Republic of Argentina between 1981 and 1988 and that, as a consequence of his services, professional fees were set to be paid to him in eleven cases. In his submissions, the petitioner made reference to the Sotavento, Copemar and Anglada cases, during which he claims that one point of contention was whether the Central Bank or Banco Patagonico was obligated to pay his fees.

10. The petitioner further asserts that the Federal Supreme Court decisions in these cases were not handed down in a context of judicial independence from the executive branch of government. Moreover, he pointed to the Metalurgica Skay case in which, according to the petitioner, the Supreme Court in 1993 had made vanish into thin air a judgment finding that the Central Bank was obligated to pay his fees and replaced it with another judgment favoring the interests of the Government.

11. With regard to the Sotavento case, the petitioner contends that on November 27, 1991, in ruling on a special appeal against a judgment issued by the Supreme Court of the Province of Buenos Aires, the Federal Supreme Court found that the Central Bank was obligated to pay the petitioner attorney's fees and sent the case back down to the lower court for it to issue a new ruling ordering CBRA to pay. He added that the Central Bank "inadmissibly" filed a new special appeal with the Federal Supreme Court, which was decided on May 6, 1997. The petitioner notes that although the appeal was denied, the decision also provided that in the enforcement of the judgment, both the existence of a contract precluding collection of his fees, as well as application of Law 24.144 could be brought up. With regard to the latter issue, the petitioner contends that application of said law would constitute an erroneous interpretation of Article 19 d. which, according to him, prohibited the Central Bank from making any rediscounts, advance payments or otherwise engaging in any credit transactions.

12. With regard to the Copemar case, the petitioner asserted that on May 6, 1997, the Federal Supreme Court struck down the decision of the Supreme Court of the Buenos Aires declaring that the Central Bank was obligated to pay the petitioners fees. In said judgment, according to the petitioner, the Federal Supreme Court ruled in favor of the Central Bank in applying Law 24.144. He added that even though rulings of the Federal Supreme Court cannot be appealed, he submitted a brief

with the Federal Supreme Court indicating “the gross violations that it had committed in its judgment.” He noted that on September 25, 1997, the Supreme Court of Justice issued a ruling setting forth that in accordance with Law 24.144 and by the will of the legislature, liquidation expenses cannot be paid with funds from the Bank.

13. As for the Anglada case, he asserted that Labor Court No 2 of the City of Mar del Plata, Province of Buenos Aires, ruled on May 31, 1994 that the Central Bank was obligated to pay his fees. He noted that the Central Bank filed a special appeal against this judgment with the Supreme Court of the Province of Buenos Aires, which in turn ruled on December 16, 1997 that said entity was not obligated to pay his fees. The petitioner added that he filed a special appeal with the Federal Supreme Court against this ruling and requested that the judges of this court that had participated in the Copemar and Sotavento cases recuse themselves from hearing the appeal filed by him. The petitioner asserted that judges of the Federal Supreme Court decided to not recuse themselves from hearing the case, and that they had prevented Justice Petrachi from recusing himself. He noted that on March 16, 1999, the Federal Supreme Court denied his special appeal.

14. The petitioner contended in his submissions that Federal Supreme Court decisions cannot be appealed and that, in filing them, domestic remedies had been exhausted. With regard to alleged violations of fair trial rights, he argued that: i) the principle of freedom from ex post facto application of laws was violated; ii) the principle of *res judicata* in the Sotavento case was violated because the decision handed down on May 6, 1997 disregarded the previously issued judgment on November 5, 1991; iii) the principle of an independent judiciary was violated in the decisions of the Federal Supreme Court. He further alleged that the right to property was violated because his fees constitute a vested right, which became part of his assets prior to the time that Law 24.144 came into effect. The petitioner also contended that the prohibition on ex post facto application of laws provided in Article 9 had been violated. He additionally alleged a violation to the right to have his honor respected as set forth in Article 11, because criminal proceedings had been brought against him.

IV. FRIENDLY SETTLEMENT

15. On October 27, 2010, the petitioner and representatives of the Republic of Argentine executed a friendly settlement agreement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT PETITION N° 11.833 (RICARDO DOMINGO MONTERISI)

The parties in petition N° 11.833 of the IACHR registry - Ricardo Domingo Monterisi - : The petitioner, Dr. Ricardo Domingo Monterisi, and the Government of the Republic of Argentina, in its capacity as State party to the American Convention on Human Rights, hereinafter the “Convention”, acting under express mandate of Article 99 section 11 of the Constitution of the Argentine Nation, represented by Dr. Andrea Gualde, National Director of Legal Affairs relating to Human Rights of the Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Nation and by Minister Eduardo Acevedo Diaz, head of the General Directorate of Human Rights of the Foreign Ministry of Argentina, are honored to inform the Illustrious Inter-American Commission on Human Rights that a friendly settlement agreement on the petition has been reached, whose content is as set forth hereunder, requesting that in light of the consensus reached, it should be accepted and the resulting report, as provided in Article 49 of the Convention, should be adopted.

I. Background

On October 27, 1997, Dr. Ricardo Domingo Monterisi filed a petition with the Inter-American Commission on Human Rights against the State of Argentina alleging violations of several rights recognized in the American Convention on Human Rights. Essentially, the petitioner held the State internationally responsible for violation of due process of the law, which is protected by Article 8 of the aforementioned Charter, inasmuch as it provides for the universal principle that every person has the right to be heard by an impartial and independent judge for the determination of his rights of a civil and/or any other nature. The petitioner further alleged that the facts might constitute a

violation of Article 21 (right to property), 25 (judicial protection), and 11 (respect for honor and dignity).

The petitioner asserted that said violation of the right to an impartial and independent judge had been committed in the adjudication of several cases before the Supreme Court of the Nation and that he filed a petition in an international forum because of the actions of several sitting justices of the Federal [Supreme] Court at the time in the notorious Banco Patagonico S.A. Metalurgica Skay case that was being heard before the Federal [Supreme] Court, and in which Dr. Monterisi appeared on the side of one party and the Central Bank of the Republic of Argentina appeared as a party on the other side.

The claimant argued that after the judgment in the aforementioned case was handed down denying the federal appeal filed by the CBRA, some of the justices of the Court had been pressured by the head of the Ministry of Economy at the time to change the above-cited judgment issued on June 8, 1993, to one more favorable to the interests of the Central Bank. The petitioner charged in his complaint that the final judgment, that is, the judgment that had been signed by all the justices of the Court and had become part of the record and formalized was removed and replaced with another one, which the local press ironically labeled as the "*recurso de arrancatoria*" or 'snatch away appeal'. Justices Bellucio and Petracchi brought criminal charges for the serious crime of the removal of the appeal, but the case strangely ended up being dismissed. Days later, then Justice of the Court Dr. Antonio Goggiano was investigated by an impeachment committee of the Senate of the Nation and, by only one vote, the Committee voted to deny the motion to bring impeachment proceedings against him.

The petitioner emphasized that the affaire of the "snatch away appeal" made it clear that the Court of that time, with its so-called "automatic majority", blatantly served at the pleasure of those holding political office who governed the country prior to May 25, 2003, as was the belief of most of the media and the literature appearing as documentary evidence along with the petition and also of accomplished Argentinean jurists.

In short, the petition alleges that this very serious crime undermined the very principle that every person has the right to a hearing before an independent and impartial judge, as the axis around which the entire framework of fair trial rights revolves, as is the case wherever there is the rule of law and which is guarded with particular zeal by the provisions of the American Convention on Human Rights. The petition also emphasized that such a scandal should have at least led to ex Justice Antonio Boggiano recusing himself from hearing the subsequent cases between the petitioner and the CBRA, which came before the Court and dealt with the same issue as in "Metalurgica Skay", after the "snatched away appeal" affaire took place, but this judge did not recuse himself from the case on his own even out of a sense of decorum and propriety, which prompted the petitioner to file the petition with the Illustrious Inter-American Commission of Human Rights.

II. Friendly Settlement Process

Without prejudice to the positions taken by the parties in the context of the legal dispute in which questions of admissibility and the merits were examined, the State and the petitioner decided to engage in discussions aimed at reaching a friendly settlement. In this context, the State and the petitioner reviewed the different cases involved in the petition in light of the general situation facing the administration of justice, particularly in the Supreme Court of Justice of the Nation.

From this perspective, an examination of the role played by the Supreme Court of Justice of the Nation at that point in history, when it was made up of a majority of justices who were suspected of not having faithfully performed their duties as such, nor did they do so with the independence and impartiality that is required under applicable international standards, and which subsequently gave rise to impeachment proceedings being brought against several of its members, makes it possible to conclude that the petitioner, at the time the petition was filed, could have had reasonable doubts as to whether or not the State properly fulfilled its duties under the obligations emanating from Articles 8 and 25 of the American Convention of Human Rights in the court cases identified in the formal petition before the illustrious Inter-American Commission on Human Rights.

Nonetheless, the petitioner notes that the measures taken by the Argentinean State in the administration of justice as of May 25, 2003 and henceforth, particularly the process of turnover of the members of the highest court of the Republic and instituting impeachment proceedings against and the subsequent removal for improper performance of duties of justices of the Supreme Court of the Nation, constituted an adequate response to the subject of the petition, considering himself to have received full satisfaction and redress for the possible violations of fair trial rights and effective judicial protection that may have been committed in the aforementioned cases. In light of this, the petitioner waives any other potential reparation arising from this petition.

Furthermore, the petitioner appreciates the self-imposed limitations on the appointment of justices to the Supreme Court of the Nation, implemented by the National Executive Branch under decree 222/03, which he considers positive proof of the political will of the Argentinean government to properly fulfill the international obligations it pledged to fulfill in this subject matter.

III. Conclusions

The parties enter into this agreement recognizing each other's good will and positive approach throughout the whole friendly settlement process, note their full agreement with its content and scope and express their gratitude to the Illustrious Inter-American Court on Human Rights for its good offices and ongoing commitment.

Lastly, the parties request the Illustrious Commission to promptly approve the present agreement, as provided by Article 49 of the American Convention on Human Rights, and for the Ministry of Foreign Relations of Argentina to be directed to implement the appropriate measures for that purpose.

In witness of their acquiescence, four copies of this same document are signed, in the City of Washington DC on October 27, 2010."

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

16. 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 disposed of in a non-contentious manner and, in different cases from a variety of countries, it has proven to be an important and effective means for both parties to settle disputes.

17. The IACHR notes at this point that the petitioner recognizes in the agreement particular actions of the State as full reparation of his claims. The Commission understands that the petitioner is

fully satisfied and hereby drops his claim before the Commission. The Commission appreciates the efforts by the parties in reaching the settlement, and declares it is compatible with the object and purpose of the Convention. The Commission states that this settlement does not have any effect or means any decision in relation to persons who are not victims in the present petition.

VI. CONCLUSIONS

18. Based on the foregoing considerations and in accordance with the procedures set forth in Articles 48(1)(f) and 49 of the American Convention, the Commission once again wishes to reiterate its satisfaction for the efforts made by the parties and for reaching the friendly settlement agreement in the present case based on the objective and purpose of the American Convention.

19. 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 October 27, 2010.

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

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, Luz Patricia Mejía Guerrero, Felipe González, and María Silvia Guillén, members of the Commission.