

REPORT No. 19/11
PETITION 2829-02
FRIENDLY SETTLEMENT
INOCENCIO RODRÍGUEZ
ARGENTINA
March 23, 2011

I. SUMMARY

1. On August 8, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”), received a petition lodged by attorney Rodolfo M. Ojea Quintana¹ (hereinafter “the petitioner”), in which he alleged violations by the Argentine Republic (hereinafter, “the State” or “the Argentine State”) of Articles 8, 21, 24, and 25 de the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with Article 1.1 thereof, with respect to Mr. Inocencio Rodríguez (hereinafter “the alleged victim”).

2. According to the petitioner, during the last military dictatorship in Argentina, Mr. Inocencio Rodríguez had been deprived of his liberty for more than four years in a prison controlled by the military, where he was systematically tortured at the hands of agents of the State. Following Argentina’s return to democratic governance, Mr. Rodríguez filed a complaint against the State seeking reparations for the four years he was deprived of liberty. However, that complaint was denied on the grounds that he had been tried and convicted by a civilian court in a regular legal proceeding. Mr. Rodríguez filed an administrative claim and, later, a judicial appeal, both of which were unsuccessful.

3. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, provides a summary of the facts alleged by the petitioner and transcribes the friendly settlement agreement signed on August 16, 2007, by the petitioner and by the representatives of the Argentine Republic, and approved by means of National Executive Order No. 568 of April 4, 2008. Having reviewed the agreement’s consistency with the principles of the American Convention, the Commission resolves to notify the parties, make this report public, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

4. The petition in question was received on August 8, 2002, and forwarded to the State on July 13, 2005, which was given a period of 90 days to remit any information it deemed relevant. In a communication dated September 15, 2005, the State requested an extension, later submitting its response in a communication dated February 1, 2006. In that communication, the State expressed its willingness to engage in dialogue with the petitioner to explore the possibility or reaching a friendly settlement of the case.

5. The Commission forwarded the State’s response to the petitioner in a communication dated March 28, 2006. On October 16, 2006, the petitioner sent the Commission a copy of an agreement signed by the parties, which had been drafted at a meeting held for the purpose of reaching a friendly settlement.

6. On April 25, 2008, the IACHR received a copy of a friendly settlement agreement submitted by the State, which had been signed August 16, 2007, on the one hand, by the petitioner, Dr. Tomás Ojea Quintana and; on the other, by the Argentine Republic, represented by Dr. Eduardo Luis Duhalde, Secretary of Human Rights of the Ministry of Justice and Human Rights of the Nation, and by Ambassador Horacio Arturo Méndez Carreras, Special Representative for Human Rights of the Ministry of

¹ In a communication dated December 25, 2005, Mr. Rodolfo Ojea Quintana gave notice that he had resigned as the attorney representing Mr. Inocencio Rodríguez in the case, and was subsequently replaced by attorney Tomás Ojea Quintana.

Foreign Affairs, International Trade, and Worship. The agreement was approved by National Executive Order No. 568 of April 4, 2008.

III. FACTS

7. The petitioner alleged that during the last military dictatorship, Mr. Inocencio Rodríguez had been deprived of his liberty for more than four years in a prison controlled by the military. He added that the alleged victim had been systematically tortured by agents of the State, and that the conditions of his incarceration had been unacceptable.

8. The petitioner also noted that once the rule of law had been reestablished, several reparations laws were enacted, including Law No. 24.043 and No. 24.906, under which Mr. Rodríguez sued for reparations in 1996. That same year, the Ministry of the Interior granted reparations for the period of 14 days from the time of the alleged victim's arrest until he was turned over to the custody of the federal court, but refused to concede reparations for the remainder of Mr. Rodríguez' incarceration, on grounds that a civilian court had convicted him in regular legal proceedings. The petitioner contends that the Argentine justice system would have therefore considered Mr. Rodríguez an ordinary prisoner and not a political victim of the *de facto* authoritarian regime.

9. The petitioner conceded that while it is true that Mr. Rodríguez had been convicted and that a formal court order of incarceration had been issued, it was likewise true that the way the military dictatorship had structured the country's government proves that the political power of that military authority in charge of the penitentiaries outstripped that of the ordinary justice system, and therefore allowed it to deprive people of their liberty beyond that system. Consequently, any prison sentences handed down by the ordinary justice system would, in final instance, depend on the military authority.

10. Mr. Rodríguez filed an administrative claim against the Ministry of the Interior, and subsequently, a judicial appeal, neither of which were successful. The petitioner argued that denying reparations to Mr. Rodríguez would be tantamount to discrimination and deprived him of a right to which he is entitled under the law. The petitioner argued that the court actions filed were ineffective and that the authorities acted arbitrarily.

11. The petitioner contended that the alleged victim suffered violations of the rights protected by Articles 8, 21, 24, and 25 of the Convention, in conjunction with the obligation of respecting those rights set out in Article 1.1 thereof.

IV. FRIENDLY SETTLEMENT

12. On August 16, 2007, the petitioner, Dr. Tomás Ojea Quintana and representatives of the Argentine Government signed an agreement, the text of which stipulated as follows:

The parties to petition No. 2829/02 (Inocencio Rodríguez), registered with the Inter-American Commission on Human Rights: the petitioners, represented herein by Dr. Tomás Ojea Quintana, and the Government of the Argentine Republic, as a State party to the American Convention on Human Rights, hereinafter "the Convention," acting in accordance with the express mandates of Articles 99(11) and 126 of the Argentine Constitution, represented by the Secretary of Human Rights of the Ministry of Justice and Human Rights of the Nation, Dr. Eduardo Luis Duhalde, and by the Special Representative for Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, Ambassador Horacio Arturo Méndez Carreras, have the honor to inform the Honorable Inter-American Commission on Human Rights that they have reached a friendly settlement to the petition, whose content is included below, and request that, based on the consensus achieved, this agreement be accepted and the pertinent report adopted, pursuant to Article 49 of the Convention.

I. Background

On August 8, 2002, the petitioner filed a petition on behalf of Mr. Inocencio Rodríguez against the Argentine State. The petitioner asserted that during the last military government, Mr. Rodríguez

had been imprisoned from March 26, 1976 through May 22, 1980, accused by the federal justice system of having violated Article 189 bis of the Criminal Code in force at the time. Sometime later, Mr. Rodríguez sought reparations from the competent authorities pursuant to Law No. 24.043, convinced that his circumstances were homologous to the specific cases addressed under the above-cited legislation. However, Mr. Rodríguez' case was denied on grounds it did not satisfy the provisions of said law inasmuch as he had been tried and convicted by the federal justice system.

Having exhausted domestic remedies, Mr. Rodríguez filed a petition with the Inter-American Commission on Human Rights alleging that the facts presented amounted to violations of Articles 8, 25, 21, and 24 of the American Convention on Human Rights.

II. Friendly settlement

After evaluating the petition, the Commission decided to forward it to the Argentine State in a communication dated July 13, 2005. Upon analyzing Mr. Rodríguez' case, and without recognizing the issues of fact and law raised in the petition, the Argentine State, in a communication dated February 1, 2006, expressed its willingness to engage in dialogue to explore the possibility of reaching a friendly settlement.

On March 26, 2006, the representative of the petitioner presented the Argentine Ministry of Foreign Affairs, International Trade, and Worship with a document outlining his expectations for the process. Within that framework, a number of working meetings were held in which it was confirmed from the statements set out in the petition that Mr. Rodríguez had in fact received a prison sentence in the case entitled "Rodríguez Ramón Inocencio et al s/violation Article 189 bis of the Criminal Code and/or violation of law No. 20.840 and/or criminal association," which was tried before the Federal District Court of First Instance of Santa Rosa.

In that respect, although the petitioner's detention was due to a decision handed down by judicial authorities, whereby the normative basis justifying it was excluded from the provisions of Law No. 24.043, it was based on Law No. 20.840, known as the "Law on National Security: Penalties for all types of subversive acts," which was notoriously used by the military dictatorship to legalize the persecution of its political opposition. It was precisely this situation that led the Argentine Congress, through Law No. 23.077, to repeal Articles 1 through 5 of the aforementioned law, once the country returned to democratic governance.

The reparations policy of the Argentine State with respect to state terrorism is nurtured and inspired by 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 recurrences. 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 No. 70/91, and subsequently to laws 24.043 and 24.411, which contain 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 provisions of its domestic law to justify its failure to perform an international obligation. From that point of view, the State considers Mr. Inocencio Rodríguez a victim of political persecution by the military dictatorship that ruled the country with an iron fist from March 24, 1976 through 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. Inocencio Rodríguez should be granted monetary

reparations in accordance with the scheme envisaged in Law No. 24.043, for the whole of the period during which he was detained and not compensated within the framework of file MI No. 345.041/92. 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.

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 No. 24.043 in order to include, under conditions deemed appropriate, cases in which a person is deprived of his freedom in accordance with the provisions of Law No. 20.840 as compensable grounds under its regulatory framework. 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 petitioner 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.

Buenos Aires, August 16, 2007.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. 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.

14. The Commission fully appreciates the efforts of the parties to reach this agreement and declares that it is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

15. Based on the foregoing considerations and in accordance with the procedure provided for by 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 for the achievement of a friendly settlement agreement in the instant case, based on the purpose of the American Convention.

16. Based on the foregoing considerations and conclusions outlined 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 August 16, 2007.

2. To continue to follow-up and monitor of each and every point of this friendly settlement and to remind the parties of their commitment to inform the IACHR regarding compliance with this friendly settlement.

3. To publish this report and 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, Luz Patricia Mejía Guerrero, Felipe González, and María Silvia Guillén, members of the Commission