

REPORT No. 85/11
PETITION 12.306
FRIENDLY SETTLEMENT
JUAN CARLOS DE LA TORRE
ARGENTINA
July 21, 2011

I. SUMMARY

1. On July 7, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by the Centro de Estudios Legales y Sociales (CELS) and, subsequently, the Center for Justice and International Law (CEJIL) joined the petition (both, hereinafter, “the petitioners”) alleging a violation by the Argentine Republic (hereinafter “the State” or “the Argentine State”) of the rights to personal liberty, to a fair trial, to judicial protection, to non-interference in one’s private life, and to protection of the family, enshrined respectively in Articles 7, 8, 25, 11(2), and 17 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with Article 1(1) of said instrument, to the detriment of Mr. Juan Carlos De la Torre (hereinafter “the alleged victim”).

2. The petitioners indicated that Mr. Juan Carlos De la Torre, of Uruguayan nationality, entered Argentina in 1974 with authorization from the National Immigration Office, and, after 24 years of living in Argentine territory, Mr. De la Torre was arrested without a judicial warrant and expelled from the country through a summary process that did not offer judicial guarantees.

3. This friendly settlement report, as established in Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, sets forth the facts alleged by the petitioners and reproduces the friendly settlement agreement signed on November 4, 2009, by the petitioners and by representatives of the Argentine Republic. In addition, the agreement signed by the parties is approved and it is agreed that this report will be published in the Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

4. The petition in question was received on July 7, 1999, and on July 17, 2000, it was forwarded to the State, which was given 90 days to send in the information it deemed relevant. By note of November 3, 2000, the State sent its observations on admissibility, which were forwarded to the petitioners on November 8, 2000; they were given 30 days to submit their observations.

5. By communication of December 1, 2000, the petitioners requested an extension, and on January 4, 2001, they sent in their response. The petitioners submitted additional information on the following dates: May 25, 2001, December 3, 2001, August, 2002, March 5, 2003, April 3, 2003, and June 18, 2003, which was duly forwarded to the State.

6. The State, for its part, submitted additional information by communications of March 5, 2001, October 4, 2001, May 15 and 22, 2002, May 2, 2003, June 25, 2003, and October 24, 2004, which were duly forwarded to the petitioners.

7. On October 17, 2003 a working meeting was held during the 118th period of sessions of the IACHR in which the parties agreed to initiate a dialogue aimed at exploring the possibility of a friendly settlement of the case. By way of follow-up, working meetings were held on the following dates: March 5, 2004, October 26, 2004, March 2, 2005, October 19, 2005, March 8, 2006, December 7, 2006 (during a working visit), October 11, 2007, and November 4, 2009.

8. At the meeting held November 4, 2009, in the context of the 137th period of sessions of the IACHR, the Argentine State and the petitioners signed a friendly settlement agreement; and on October 27, 2010, a follow-up meeting was held during the Commission's 140th period of sessions.

III. THE FACTS

9. The petitioners indicated that Mr. Juan Carlos De la Torre, of Uruguayan nationality, entered Argentina in 1974 for the purpose of working, to which end the National Immigration Office gave him an authorization that enabled him to perform remunerated work. Mr. De la Torre lived in Argentine territory for 24 years with his family.

10. On November 28, 1996, Mr. De la Torre was arrested, without a judicial order, by officers of the Argentine Federal Police and taken to Police Station No. 12 of the city of Buenos Aires. During his detention, Mr. De la Torre was not notified of the charges for which he was being held.

11. The petitioners added that on December 3, 1996, two attorneys filed a writ of habeas corpus with Federal Court of Criminal Investigation (Juzgado Nacional de Instrucción) No. 40, on behalf of Mr. De la Torre, on finding out that he was to be expelled from the country that same night. The habeas corpus alleged the unconstitutionality of the General Law on Immigration (22,349) and its regulatory decree (1023/94), which authorized the detention of a foreigner without a competent judicial order, and the subsequent expulsion ordered by administrative authorities, nor did it provided for the necessary assistance of counsel or the possibility of offering evidence on one's own behalf, or to judicially challenge the administrative decision. The writ of habeas corpus was dismissed that same day at 9:20 pm, and at 12:00 a.m. on December 4, 1996, Mr. Juan Carlos De la Torre was expelled from Argentina, and prohibited from re-entering the country. The appellate court affirmed the decision of the judge of first instance, as Mr. De la Torre had already been expelled.

12. The petitioners added that the same attorneys filed a constitutional motion, which was granted. Nonetheless, in its ruling the Chamber of Cassation declared it inadmissible because it did not appear from the record that those bringing the motion were the defense counsel of Mr. Juan Carlos De la Torre. The attorneys then filed a special appeal (*recurso extraordinario*), alleging the violation of due process guarantees during the arrest and expulsion of Mr. De la Torre, as well as the lack of judicial review of administrative decisions. They also noted that the failure to suspend the expulsion procedure by the judge of first instance impeded sufficient judicial review. The Supreme Court, by majority vote, dismissed the appeal, alleging that its purpose, i.e. restriction of liberty, had become an abstract question.

13. The petitioners argued that the alleged victim suffered a violation of the rights protected by the Convention at Articles 7, 8, 25, 11(2), and 17 of the American Convention on Human Rights in relation to the obligation to respect the rights, set forth in Article 1(1) thereof.

IV. FRIENDLY SETTLEMENT

14. On November 4, 2009, the petitioners and representatives of the Government of the Argentine Republic signed an agreement whose text reads as follows:

The parties in petition No. 12,306 of the registry of the Inter-American Commission on Human Rights – Juan Carlos De la Torre: Centro de Estudios Legales y Sociales (CELS), represented herein by Ms. Andrea Pochak, and the Center for Justice and International Law (CEJIL), represented herein by Ms. Liliana Tojo, both in their capacity as petitioners, and the Government of the Argentine Republic, in its capacity as a state party to the American Convention on Human Rights, hereinafter “the Convention,” represented by the Deputy Secretary for the Protection of Human Rights of the Nation, Mr. Luis Hipólito Alen; the National Director for Legal Matters on Human Rights, Ms. Andrea Gualde; the Director for Human Rights (International Litigation) of the Argentine Ministry of Foreign Affairs, Mr. Javier Salgado; the Adviser to the Minister of the Argentine Foreign Ministry, Mr. Jorge Cardozo; and the Representative of the National Immigration Office, Mr. Carlos Alberto Beraldi, who signs this document *ad referendum* the National Director for Immigration, have the honor to inform the illustrious Inter-American Commission on Human Rights

that they have reached a friendly settlement agreement in relation to the petition, whose contents are set forth below requesting that considering the consensus reached, it be accepted and that the report provided for in Article 49 of the Convention be adopted.

I. THE FRIENDLY SETTLEMENT PROCESS

1. In the context of the 118th period of sessions of the Inter-American Commission on Human Rights, the Argentine State and the petitioners agreed to engage in a dialogue aimed at exploring the possibility of a friendly settlement of the petition, all without prejudice to the arguments of fact and of law put forth by the parties in the course of the procedure.

2. On that occasion, a working agenda was agreed upon that included the evaluation of various regulatory and administrative measures related both to the legal framework in force on immigration and with respect to the individual situation of Mr. Juan Carlos De la Torre.

3. The process that began contributed decisively to the derogation of the law on immigration then in force, known as the "Videla Law," and to its replacement by Law 25,871, approved on January 20, 2004; to the implementation of a mechanism for consultation with different organizations for the purpose of issuing the regulation of the new law; to the adoption of the measures necessary for approving and subsequently ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; to the suspension of immigration inspections and their sequelae of stops, arrests, and expulsions; to the issuance of Decree 836/04 that regulates the normalization of the papers of natives of MERCOSUR, Chile, Bolivia, and Peru; and to the issuance of Decree 1169/04, with the identical objective for the persons who are nationals of any other state. In that regard, the recently approved "National Plan against Discrimination" includes a chapter specifically dedicated to migrants and refugees.

4. In addition, and particularly as regards the personal situation of Mr. De la Torre – whose expulsion from the national territory without proper guarantees led to the complaint filed with the IACHR – the National Immigration Office, pursuant to the working agenda to which reference is made in point 2 of this agreement, resolved on October 13, 2005 to lift the prohibition on his re-entry to Argentine territory.

5. In the context of the 123rd regular period of sessions of the IACHR, on October 19, 2005, the parties stated that in view of the extent of progress in getting through the working agenda of this dialogue process, "... the conditions are set for evaluating the final document of understanding." From that perspective, the parties stated their "satisfaction with and mutual recognition of the efforts deployed by both with a view to reaching a friendly settlement of this petition."

II. FRIENDLY SETTLEMENT AGREEMENT

In view of the foregoing, the Government of the Argentine Republic and the petitioners agree:

- 1) To state their satisfaction with the results of the friendly settlement process described above, which ratifies once again the high value and potential of the inter-American system for the protection of human rights, and in particular of the institution of friendly settlement as a legitimate early warning mechanism and for the effective implementation of measures aimed at the institutional improvement of the State;
- 2) That the Argentine State undertakes to adopt all those measures necessary to ensure respect for the international standards that apply on immigration matters, based on the following tentative working agenda:
 - a) The Argentine State undertakes to make its best efforts to issue, within one (1) month, the regulation of the new Law on Immigration, taking as the text the proposed legislation approved by the Advisory Commission for the Regulation of Law No. 25,871, created by Order No. 37130/08 of the National Immigration Office, of May 26, 2008. Said Commission was made up of ecclesiastic organizations such as the Fundación Comisión Católica, and human rights organizations such as CELS, among others. The Commission, which sat from June to October 2008, drew up a draft regulation of the immigration law, which is attached as an integral part of this agreement. This draft respects the contents of the new law, guaranteeing, among other aspects, equal access for

immigrants to social services, public goods, health care, education, justice, work, employment and social security, the right to form and raise a family, the right to due process in immigration proceedings, facilities for the payment of the immigration fee (*tasa migratoria*), and a clear system of exemption from that fee, and the adoption of the measures necessary to ensure adequate legal advisory services for migrants and their families.

b) The Argentine State undertakes to make a detailed review of the legislation in force on this subject (federal and provincial) so as to foster the adaptation of those provisions that may contain provisions that effectuate illegitimate discrimination based on the status of a person as a foreigner or on their immigration status to the international and constitutional standards on the subject. In this regard, the parties note the approval of the “National Plan against Discrimination,” which includes a chapter specifically devoted to migrants and refugees.

c) The Argentine State undertakes, through the coordination of the Ministry of Foreign Affairs, International Trade and Worship, to periodically hold working meetings, at the office of the Ministry of Foreign Affairs, as necessary so as to monitor the effective application of the commitments taken on, to which the state agencies with jurisdiction over the various issues to be evaluated shall be convened, and to inform the Inter-American Commission on Human Rights with the same frequency.

III. PETITION

1. The Government of the Argentine Republic and petitioners celebrate the signing of this agreement, state their full agreement with its content and scope, and mutually value the good will expressed in the negotiation process.

2. In addition, the parties are grateful for the permanent cooperation and monitoring of the case by the illustrious Inter-American Commission on Human Rights and ask that once the Decree of Regulation of the law is published in the official gazette (*Boletín Oficial*) of the Argentine Republic, that the friendly settlement agreement reached be approved by adoption of the report provided for in Article 49 of the American Convention on Human Rights.

3. Finally, it is noted for the record that this instrument is signed by CELS and CEJIL in their capacity as petitioners – in keeping with the broad active standing recognized by Article 44 of the American Convention on Human Rights – and not in the exercise of their representation. Accordingly, it cannot be opposed by Mr. Juan Carlos De la Torre, considering that he has not expressed his conformity.

Washington, DC, November 4, 2009.

V. DETERMINATION OF COMPATIBILITY AND IMPLEMENTATION

15. The IACHR reiterates that pursuant to Articles 48(1)(f) and 49 of the Convention, this procedure has as its purpose “to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The agreement to engage in this procedure expresses the good faith of the State when it comes to carrying out the purposes and objectives of the Convention, in keeping with the principle of *pacta sunt servanda*. In addition, it wishes to reiterate that the friendly settlement procedure contemplated in the Convention makes it possible to terminate individual cases in a non-contentious manner, and has proven, in cases on various countries, to offer an important and effective vehicle for settlement that can be used by both parties.

16. The Commission attributes great value to the efforts made by the parties to reach this settlement, especially by repealing the immigration law known as the “Videla law” and replacing it by Law 25,871, adopted January 20, 2004, and by the Regulation of the Law on Immigration (*Ley de Migraciones*), signed into law May 3, 2010, by the president of Argentina through Decree No. 616.

VI. CONCLUSIONS

17. Based on the foregoing considerations and in keeping with 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 and its satisfaction with the achievement of the friendly settlement agreement in the instant case, based on the object and purpose of the American Convention.

18. 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 4, 2009.

2. To continue the monitoring and supervision described at point (b) of the friendly settlement agreement and, in this context, to remind the parties of their commitment to report periodically to the IACHR on compliance with them.

4. To make this report public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of July 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, and María Silvia Guillén, Commissioners.