

OAS/Ser.L/V/II
Doc. 234
20 October 2023
Original: Spanish

REPORT No. 215/23
CASE 14.714
REPORT ON FRIENDLY SETTLEMENT

FRANCISCO SAMUEL NAISHTAT
ARGENTINA

Approved electronically by the Commission on October 20, 2023.

Cite as: IACHR, Report No. 215/23, Case 14.714. Friendly Settlement. Francisco Samuel Naishtat. Argentina. October 20, 2023.

REPORT No. 215/23
CASE 14.714
FRIENDLY SETTLEMENT
FRANCISCO SAMUEL NAISHTAT
ARGENTINA
OCTOBER 20, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On October 20, 2010, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Francisco Samuel Naishtat (hereinafter "alleged victim"), represented by Elena Carmen Moreno and Myriam Carsen (hereinafter "the petitioners" or "the petitioning party"), alleging the international responsibility of the Republic of Argentina (hereinafter "State" or "Argentine State" or "Argentina"), for the violation of the human rights set forth in Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection), in relation to Article 1 (obligation to respect) of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention"), to the detriment of the alleged victim derived from the facts that forced him to go into exile in France during the last civil-military dictatorship in Argentina, as well as for the violation of his rights to fair trial, to judicial protection, and to equality and non-discrimination in the course of the civil proceedings based on Law No. 24,043.

2. On September 7, 2021, the Commission issued Admissibility Report No. 235/21, in which it declared the petition admissible as well as its competence to hear the claim presented by the petitioners regarding the alleged violation of the rights contained in Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) contained in the American Convention in relation to Articles 1.1 (obligation to respect) and 2 (duty to adopt provisions of domestic law) thereof.

3. On August 2, 2022, the parties initiated a friendly settlement process with the facilitation of the Commission, which materialized in the subscription of a friendly settlement agreement (hereinafter "FSA") on July 5, 2022. On June 8, 2023, the State informed of the issuance of Decree No. 277/2023 of May 23, 2023 of the National Executive Branch approving the respective agreement and, in turn, requested the Commission the corresponding homologation, as established in the FSA. On August 25, 2023, the petitioners requested the Commission the corresponding homologation.

4. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, contains a summary of the facts alleged by the petitioners and a transcript of the friendly settlement agreement signed on July 5, 2022 by the petitioners and representatives of the Argentine State. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioner held that the alleged victim was a student activist and that his mother, Susana Lilia Aguad, was an attorney who defended political prisoners and union leaders during the dictatorship. In 1974, when the alleged victim was 16 years old, Mrs. Aguad was kidnapped in the province of Córdoba and days later was detained at the disposal of the Executive Branch; she requested to leave the country for France, which granted her refuge in February 1976. The petitioner stated that when the family group made up of the alleged victim, his father and two brothers, was trying to meet with Mrs. Aguad in France, their home was set on fire by members of the Comando Libertadores de América, who also looted their main belongings. The petitioner argued that the alleged victim had to leave Argentina to protect his life and that, like his parents, he was considered a refugee by the Office of the United Nations High Commissioner for Refugees (UNHCR) in France.

6. In 1998, the alleged victim requested economic reparation under Law 24,043 for the aforementioned forced exile, which had the favorable opinion of the Secretariat of Human Rights of Argentina and the Legal Affairs Office of the Ministry of Justice. However, the Ministry of Justice denied the compensation, since it considered that the exile was not included in the situations of reparation of Law 24,043. The alleged victim filed a direct appeal, which was considered admissible by the National Court of Appeals for Federal Administrative Matters on November 8, 2008. Against said decision, the State filed an extraordinary federal appeal before the Supreme Court of Justice of the Nation, which was declared admissible. The claims of the alleged victim were dismissed on the grounds that the highest court considered that there was no proof of persecution, despite the fact that he had submitted certifications from the UNHCR Office in France, press reports on the attack on his home, and his status as a child at the time of the facts. On July 30, 2009, the V Chamber of the Federal Contentious-Administrative Court issued a new decision dismissing the claim for compensation; the alleged victim then filed an appeal for annulment and an extraordinary federal appeal. The appeal for annulment was dismissed by Chamber V of the Federal Contentious Administrative Court, while the extraordinary appeal was rejected on April 13, 2010 by the Supreme Court of Justice of the Nation for not complying with the number of lines per page. The alleged victim was notified of the latter decision on April 27, 2010.

7. According to the petitioner, Resolution No. 670 of August 19, 2016 not only does not broaden the scope of reparation, but also violates the State's domestic legislation and the American Convention, since it modifies the framework of the reparation laws. The petitioner alleged that said resolution subtracts from the frame of Law No. 24,043 those who were restricted from freedom due to political persecution, and who still did not have their right to reparation recognized, as it creates administrative channels that reduce the corresponding amount. It also held that the IACHR has competence *ratione temporis* to hear the complaint.

III. FRIENDLY SETTLEMENT

8. On July 5, 2022, the parties signed a friendly settlement agreement, the text of which provides the following:

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case No. 14.714 of the registry of the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Elena Carmen Moreno and Myriam Carsen, in their capacity as attorney and sponsoring legal counsel respectively for the petitioner Francisco Samuel Naishtat; and the Argentine Republic, in its capacity as State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting under the express mandate of Article 99 paragraph 11, represented by the Undersecretary for International Human Rights Protection and Liaison and the National Director of International Human Rights Legal Affairs of the Secretariat of Human Rights, Dr. Andrea Pochak and Dr. Gabriela Kletzel, respectively; and the Director of International Human Rights Litigation of the Ministry of Foreign Affairs, International Trade and Worship of the Nation, Dr. A. Javier Salgado, have the honor to inform the IACHR that they have reached a friendly settlement agreement in the case, the contents of which are the following.

I. Background

On October 26, 2010, Francisco Samuel Naishtat filed a petition before the Inter-American Commission for the violation of Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention in relation to Article 1.1 thereof.

In the complaint, the petitioner states that because of his mother's, his father's, and his own political activism and militancy as a student activist, his family was the victim of persecution and threats during the last civil-military dictatorship. The petitioner reports that his mother Susana Lilia Aguad, a lawyer who defended political prisoners and union leaders, was kidnapped in 1974 in the Province of Córdoba and days later was detained at

the disposal of the Executive Power; so she requested to leave the country for France, which in February 1976 granted her refuge.

The petitioner holds that when the family group, consisting of Mr. Naishtat, his father and two brothers, was trying to meet with Mrs. Aguad, the family home was set on fire by agents of the State, who also looted their main property.

He claims that for this reason, and in order to safeguard their lives, the family was forced to go into exile in France, where they met with Mrs. Aguad.

By virtue of these facts, Mr. Naishtat filed an application for the granting of the benefit governed by Law No. 24,043 before the Ministry of Justice and Human Rights, which was rejected. His claim was also rejected in court.

On May 11, 2017, the IACHR forwarded the petition to the Argentine State.

On September 7, 2021, the Commission approved Admissibility Report No. 235/21. There it declared the admissibility of the complaint in relation to Articles 8, 24 and 25 of the American Convention, in relation to its Articles 1.1 and 2 thereof.

On August 6, 2020, the Minister of Justice and Human Rights of the Nation instructed the areas involved in the processing of applications for the benefit provided for in Law No. 24,043 to apply the new doctrine set forth by the Office of the Attorney General of the Treasury of the Nation in Opinion No. IF-2020-36200344-APN-PTN. In view of this, the National Directorate of International Legal Affairs in Human Rights Matters of the National Secretariat of Human Rights consulted the Directorate of Management of Reparation Policies to determine whether the criteria currently in force would allow for the recognition of the petitioner's claim as a situation of exile.

Following the affirmative response, a process of dialogue was initiated with the petitioner in which the request for reparations was limited to the expeditious granting of the benefit duly requested, without any other claim for reparations of an economic nature, or of any other kind.

The State considers that Mr. Francisco Samuel Naishtat has been a victim of political persecution by the civil-military dictatorship which afflicted the Argentine Republic between March 24, 1976 and December 10, 1983. In view of this, in line with IF-2022-60344908-APN-DNAJIMDDHH#MJ of the National Secretariat for Human Rights and in compliance with its international human rights obligations, the Argentine State understands that the petitioner has the right to be adequately compensated for the violations he suffered.

II. Measures to be adopted

1. The parties agree that pecuniary reparation will be granted in accordance with the scheme provided for by Law No. 24,043, considering for this purpose the entire period during which Mr. Francisco Samuel Naishtat remained in forced exile, according to ruling IF-2022-60344908-APN-DNAJIMDDHH#MJ. That is, from June 14, 1976 and October 28, 1983.

2. The Argentine State undertakes that, within three (3) months from the publication in the Official Gazette of the Argentine Republic of the Decree of the National Executive Power approving this agreement, a ministerial resolution shall be issued granting the reparation benefit provided for in Law No. 24,043, without additional costs or expenses. The amount

of the reparation shall be calculated as of the date of the issuance of said ministerial resolution.

3. Once the petitioner submits to the National Administration of Social Security (ANSES) a valid copy of his national identity document and the form (PS.6.298) requesting the benefit provided for in Law No. 26.913 correctly completed, and signs the affidavit attached as an annex, the Argentine State undertakes to issue the corresponding resolution within three (3) months.

4. The State also undertakes to comply with the term of Article 30 of the regulation of Chapter V of Law No. 25,344, provided for in Executive Decree No. 1116/2000.

5. Upon payment of the reparation provided for in section II.2 of this agreement, the petitioner definitively and irrevocably waives the right to initiate any other pecuniary claim against the State in relation with the facts which motivated the present case.

III. *Ad referendum* signing

The parties state that this agreement shall be approved by a Decree of the National Executive Power.

The Government of the Argentine Republic and the petitioning party welcome the signing of this agreement, express their full conformity with its content and scope, mutually appreciate the goodwill shown and agree that once the Decree of the National Executive Branch is published in the Official Gazette of the Argentine Republic, the Inter-American Commission on Human Rights will be requested, through the Ministry of Foreign Affairs, International Trade and Worship, to adopt the report referred to in Article 49 of the American Convention on Human Rights, at which time the agreement will acquire full legal force and validity.

Three copies of the same tenor are signed in the Autonomous City of Buenos Aires, on the 5th day of the month of July, 2022.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the American Convention, the purpose of this procedure is to “reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention.” The acceptance to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith.¹ It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

10. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

11. As established in Clause III of the agreement, and in view of the State's confirmation of June 8, 2023, regarding the issuance of Decree No. 277/2023 of the National Executive Branch approving the FSA, as

¹ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: “**Pacta sunt servanda**” *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

well as the petitioner's request of August 25, 2023, to move forward with its homologation, it is appropriate at this time to assess compliance with the commitments established in this instrument .

12. With respect to clause II.2, concerning the issuance of the ministerial resolution granting the reparation benefit provided for in Law No. 24,043, the Commission observes that on July 19, 2023, the State reported that on July 12, 2023, the Minister of Justice and Human Rights of the Nation issued resolution RESOL-2023-743-APN-MJ, through which it resolved to grant Francisco Samuel Naishtat the benefit foreseen in Law No. 24,043, establishing the compensable days and the corresponding compensatory amount. This information was made known to the petitioner. In view of the foregoing, the Commission considers that Clause II.2, regarding the issuance of the Ministerial resolution to make the reparation effective in favor of Mr. Naishtat, has been fully complied with and it so declares.

13. Likewise, with regard to clause II.3, on the issuance of the resolution under Law No. 26, 913, the Commission observes that, on July 19, 2023, the State reported that on July 3, 2023, the Secretary of Human Rights of the Nation issued resolution RESOL-2023-601-APN-SDDHH.MJ, through which it resolved to grant Francisco Samuel Naishtat the benefit provided for in Law No. 26,913. This information was made known to the petitioner. In view of the foregoing, the Commission considers that clause II. 3 regarding the issuance of the resolution under Law No. 26,913 in favor of Mr. Naishtat, has been fully complied with and it so declares.

14. On the other hand, with regard to clauses II.1 (payment of pecuniary reparation) and II.3 (term) of the friendly settlement agreement, the Commission considers that they are pending compliance and it so declares. Therefore, the Commission considers that the friendly settlement agreement has a partial level of compliance and it so declares. In this regard, the Commission will continue to monitor the implementation of the FSA until full compliance is achieved.

15. Finally, the Commission considers that the rest of the content of the agreement is of a declarative nature and therefore it is not for the Commission to supervise it.

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement has been arrived at in the present case on the basis of respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on July 5, 2022.
2. To declare clauses II.2 (issuance of ministerial resolution under Law 24,043) and II.3 (issuance of the resolution under Law No. 26,913) of the friendly settlement agreement fully complied with, according to the analysis contained in this report.
3. To declare clauses II.1 (payment of pecuniary reparation) and II.3 (time limit) of the friendly settlement agreement to be pending compliance, according to the analysis contained in this report.
4. To declare that the friendly settlement agreement has a level of partial compliance, according to the analysis contained in this report.

5. To continue monitoring compliance with clauses II.1 (payment of pecuniary reparations) and II.3 (term) of the friendly settlement agreement, according to the analysis contained in this report. To this end, remind the parties of their commitment to report periodically to the IACHR on their compliance.

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

Approved by the Inter-American Commission on Human Rights on the 20th day of the month of October, 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, Stuardo Ralón Orellana and José Luis Caballero Ochoa, Commissioners.