

REPORT Nº 1/93

Report on the Friendly Settlement Procedure in Cases
10.288, 10.310, 10.436, 10.496, 10.631 and 10.771

ARGENTINA

March 3, 1993

1. BACKGROUND

The cases lodged by the following Argentine citizens were joined by the Commission:

Vaca Narvaja, Miguel - claiming his rights as an heir
Bartoli, Bernardo
Birt, Guillermo Alberto
Caletti, Gerardo Andrés
Di Cola, Silvia
Ferrero de Fierro, Irma Carolina
Fierro, José Enrique
Gatica de Giuliani, Marta Ester
Giuliani, Héctor Lucio
Olivares, Jorge Abelardo
Padula, Rubén Héctor
Torregiani, José Mariano
Puerta, Guillermo Rolando

The above-named petitioners were unlawfully arrested by the Military Junta that ruled Argentina from 1976 to 1983. The government accused them of being subversives and held them in custody by order of the Executive Power, though none was convicted of any crime. All of the arrests were made without a court order. The periods of confinement varied from three months to seven years. Most of the petitioners were held under terrible conditions, in an atmosphere of torture and summary execution that left them in constant fear for their lives. Some sustained permanent physical injuries; one lost a kidney as a result of a wound inflicted with a bayonet. Another was murdered while in prison.

A few months after President Raúl Alfonsín took office in December 1983, the petitioners--or their surviving heirs--filed suit against the Argentine State for the property and mental damages caused by virtue of their detention. All of the petitioners filed their suits within three months of the fall of the military government. In many cases, the petitioners received lower court rulings in their favor, but the Federal Chamber of Cordoba and the Supreme Court of Justice of the Nation declared that the statute of limitations for bringing legal action had expired. The petitioners argued that under Argentine law the

statute of limitations could be extended in cases of "de facto problems or impediments." The limitation could be extended by as much as three months after the problem or impediment ceased to exist (Argentine Civil Code, Article 3980). They argued that the absence of an extension would render their rights illusory. Nevertheless, the Argentine Supreme Court held that accepting the petitioners' arguments would be tantamount to admitting that there had been a "parenthesis in Argentine life" and legal certainty would be seriously undermined. According to the Supreme Court, the suits filed by the petitioners should have been instituted during the military government, before expiration of the two-year statute of limitations prescribed for actions instituted to recover what has been lost as a result of unlawful acts.

The first of the cases was submitted to the Commission on February 15, 1989, and the others followed in succession as the Argentine Supreme Court handed down its rulings.

The petitioners argued that the rulings of the Argentine Supreme Court that declared that the statute of limitations had expired in their actions, violated the right to a fair trial recognized in Article XVIII of the American Declaration of the Rights and Duties of Man and the rights to a fair trial and to judicial protection recognized in articles 8 and 25 of the American Convention on Human Rights. They asserted that the reasoning of the Argentine Supreme Court was at odds with the jurisprudence established by the Inter-American Court of Human Rights in the "Velásquez Rodríguez" case to the effect that the States Parties have an obligation "to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law" (paragraph 91 of the Velásquez Rodríguez case, Preliminary Objections). The petitioners invoked the competence of the Commission under the American Convention and, failing that, under the American Declaration, in accordance with the Commission's Statute. They asked that their petition be declared admissible, that the Commission place itself at the disposal of the parties with a view to reaching a friendly settlement; should no friendly settlement be reached, they asked that a report be prepared condemning the position taken by the Argentine Supreme Court that prevented the petitioners from obtaining fair compensation for the damages caused; they also asked that eventually the case be submitted to the Inter-American Court of Human Rights so that the latter might order payment of a just compensation.

On August 15, 1989, the Government replied using two basic arguments. First, it objected to the admissibility of the petitions on the grounds that the American Convention did not apply ratione temporis; it argued that the petition was inadmissible "as it concerned facts that occurred before the American Convention entered into force for the country" (reply, page 2). The Government argued that the Argentine instrument of ratification was not deposited until August 14, 1984, and that said instrument of ratification stated that "the obligations undertaken by virtue of the Convention shall have effects in respect of events that occur subsequent to its ratification." Since all the unlawful acts committed against the

petitioners occurred during the military government--and before Argentina ratified the Convention--the Convention was, in the opinion of the Argentine Government, not applicable. Second, the Government denied that the American Declaration was binding upon the Member States of the OAS, insisting that even though the Declaration had by now become customary law, it did not create specific procedural obligations for the State; only the Argentine State and its judges had the authority to determine whether it was reasonable to expect the petitioners to institute an action during the military government.

On September 22, 1989, the petitioners submitted their observations on the Government's reply and used the following arguments to counter the Government's contention that the petition was inadmissible ratione temporis:

1. They said that the violations of the American Convention they had denounced were not the unlawful arrests and physical injuries they sustained; instead, they were protesting the rulings handed down by the Supreme Court that denied the petitioners the opportunity to exercise their rights. They further alleged that the violation was not consummated with the arrests, but rather with the rulings of the Supreme Court, since neither effective legal remedies nor due process was being provided. A court ruling that disregarded how difficult it would have been for the petitioners to seek damages during the military government and dismissed their claim was, according to the petitioners, in itself a violation of articles 8 and 25 of the American Convention. All the Supreme Court's rulings on these cases were handed down subsequent to Argentina's ratification of the American Convention.

2. They argued that a situation that existed before and after a treaty's ratification-- such as the legal proceeding wherein the petitioners sought compensation-- was protected under the Convention.

3. They maintained that the rights invoked by the petitioners were already protected under the Declaration. The obligation to provide an effective legal recourse was already stipulated in Article XVIII of the Declaration; hence, the Argentine Government could hardly allege that it was taken "by surprise" by a new obligation being enforced retroactively. Ratification of the Convention merely changed the international mechanism for the protection of human rights, but not the right itself. They asserted that even supposing, for the sake of argument, that the Commission had decided to deny its competence as the organ under the Convention, it would still have to settle the case based on its Statute and the American Declaration.

As for the Argentine Government's argument that the Declaration did not allow the Commission to intervene in this case, the petitioners pointed out that the binding nature of the Declaration, though perhaps not clearly spelled out at the time of its adoption, was subsequently clarified in the Charter as amended by the Protocol of Buenos Aires. Articles 51 and 112 of the Charter (Articles 52 and 111 of the Charter as amended by the Protocol

of Cartagena de Indias) changed the Commission's status. It became one of the principal organs of the OAS, charged with promoting the fulfillment and protection of the human rights recognized in the Declaration. The Commission recognized the binding force of the Declaration in its Resolution N° 23/81, Case 2141 (United States) on the abortion issue.¹ There it stated that the Declaration was binding upon the United States of America. The Court, too, recognized the binding nature of the Declaration, stating that "Articles 1(2)(b) and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization."² They also stated that both the American Declaration and the American Convention authorize a right to compensation in the case of arbitrary arrests, guaranteeing access to the courts to exercise that right, and that the actions that they allow cannot be subject to the statute of limitations under international law until such time as the bearers of those rights have had an effective opportunity to exercise them.

2. SUBSEQUENT OFFER FROM THE ARGENTINE GOVERNMENT

The Commission granted the parties a hearing on May 11, 1990. There, after listening to the petitioners, the representatives of the Argentine Government reported that the Administration of President Carlos Menem, which had taken office after Argentina's reply had been filed, did not necessarily disagree with the petitioners. They pointed out that President Menem had himself been detained for political reasons during the military government, that he was sympathetic to the petitioners' situation and wanted to give them adequate compensation. The representatives of the Argentine Government presented to the Commission a copy of Decree 798/90, dated April 26, 1990, which authorized the establishment of an Ad hoc Commission in Argentina to draft a bill that would provide the petitioners with the compensation they deserved. The Commission and the petitioners expressed their approval of the Government's decision.

Pursuant to Article 48.f of the American Convention, the Inter-American Commission on Human Rights made itself available to the parties to reach a friendly settlement based on respect for human rights.

Initially, the Argentine Government encountered difficulties in implementing its decision to compensate the petitioners. During the hearing held on October 3, 1990, the Government indicated that though the Ad hoc Commission had drafted a bill for

¹ Annual Report of the Inter-American Commission on Human Rights, 1980-1981, p. 38.

² Advisory Opinion of the Inter-American Court of Human Rights, paragraph 45, July 14, 1989, on the "Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights."

compensation of the petitioners, Congress had not yet passed it. Later, at the hearing of February 8, 1991, the Government stated that it had enacted decree 70/91, dated January 10, 1991, which would allow the petitioners to be properly compensated. This decree, adopted for the specific purpose of settling the petitioners' cases, authorized the Minister of the Interior to pay a compensation, at the request of those persons who proved that they had been detained by executive order during the military government and who instituted legal proceedings prior to December 10, 1985, i.e., during the first two years of democratic government. The formula specified for the compensation was as follows: for every month of confinement, one thirtieth the monthly salary paid to a public servant at the highest level in the civil service. In the case of individuals who had died during their imprisonment, the compensation owed for five years of confinement was to be added to the amount owed for the actual period of imprisonment. In cases of individuals who had sustained serious injuries, the compensation for the period of confinement was to be paid, plus 70% of the sum received by the next-of-kin of those who died in confinement. Subsequent decrees elaborated upon the original decree to ensure that a petitioner who had been detained without an executive order would also be compensated fairly, as would a petitioner whose arrest by order of the executive branch had been upheld by the courts. The petitioners stated that they would regard payment of the amounts stipulated in Decree 70/91 to be just compensation for the damages sustained. This Executive Decree was later confirmed by National Law 24043, enacted on December 23, 1991.

3. FINAL AGREEMENT ON THE FRIENDLY SETTLEMENT

Subsequently, the Commission held hearings on September 19, 1991, January 31, 1992 and September 19, 1992, to keep abreast of the Argentine Government's fulfillment of the commitments it undertook. In the end, the petitioners agreed to the following compensation:

Vaca Narvaja, Miguel - 56,511 pesos (*)
Bartoli, Bernardo - 36,855 pesos
Birt, Guillermo Alberto - 71,739 pesos
Caletti, Gerardo Andrés - 24,921 pesos
Di Cola, Silvia - 58,212 pesos
Ferrero de Fierro, Irma Carolina - 4,401 pesos
Fierro, José Enrique - 20,655 pesos
Gatica de Giuliani, Marta Ester - 28,377 pesos
Giuliani, Héctor Lucio - 80,514 pesos
Olivares, Jorge Abelardo - 46,899 pesos
Padula, Rubén Héctor - 56,403 pesos
Torregiani, José Mariano - 37,773 pesos
Puerta, Guillermo Rolando - 67,284 pesos

(*) One Argentine peso equals one U.S. dollar.

The petitioners have agreed to the amounts offered by the Government. The petitioners and the Argentine Government have asked the Commission to close the case, since a friendly settlement was reached.

Given the foregoing, the Inter-American Commission on Human Rights, pursuant to Article 49 of the American Convention on Human Rights,

DECIDES:

1. To express its appreciation to the Government of Argentina for its manifest fidelity to the American Convention and for having paid compensation to the petitioners and to thank the petitioners for having agreed to the terms of Decree 70/91, supplemented by law 24043, of December 23, 1991, as part of the friendly settlement agreed upon by the parties.

2. To state how pleased it is with the friendly settlement agreement and to acknowledge that it has been concluded to the complete satisfaction of the parties and the Commission alike.