

OAS/Ser.L/V/II  
Doc. 236  
20 October 2023  
Original: Spanish

## **REPORT No. 217/23**

### **CASE 14.778**

REPORT ON FRIENDLY SETTLEMENT

GRACIELA EDIT ABECASIS  
ARGENTINA

Approved electronically by the Commission on October 20, 2023.

**Cite as:** IACHR, Report No. 217/23, Case 14.778. Friendly Settlement. Graciela Edit Abecasis. Argentina. October 20, 2023.

**REPORT No. 217/23**  
**CASE 14.778**  
FRIENDLY SETTLEMENT  
GRACIELA EDIT ABECASIS  
ARGENTINA  
OCTOBER 20, 2023

**I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On September 29, 2011, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Graciela Edit Abecasis (hereinafter "alleged victim"), with the legal representation of 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 contemplated in Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection), of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention"), in conjunction to Article 1 (obligation to respect) of the same instrument, to the detriment of the alleged victim derived from the persecution suffered during the 1970s, and the consequent forced exile; as well as for the violation of fair trial, judicial protection and equality and non-discrimination in the scope of the civil proceedings based on Law No. 24.043.

2. On November 4, 2021, the Commission issued Admissibility Report No. 304/21, in which it declared the petition admissible as well as its competence to hear the claim presented by the petitioners with regard to 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 domestic legal provisions) thereof the same instrument.

3. On August 16, 2022, the parties began a friendly settlement process with the facilitation of the Commission, which resulted in the signing of a friendly settlement agreement (hereinafter "FSA") on July 5, 2022. On June 6, 2023, the State reported the issuance of Decree No. 278/2023 of May 23, 2023 of the National Executive Branch approving the friendly settlement agreement and, in turn, requested the Commission the corresponding approval, as established in the FSA. On August 25, 2023, the petitioners requested the Commission the corresponding approval of the agreement.

4. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, this friendly settlement report includes 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 during the 1976-1983 dictatorship, Mrs. Graciela Edit Abecasis had to go into exile with her family, consisting of her partner and her son, in order to safeguard her life and that of her spouse, or at least her freedom. In summary, i) Mrs. Abecasis and her partner, Marcelo Nicolet, were Peronist political activists during the 1960s; ii) Mr. Nicolet had years of student militancy at the University of La Plata and carried out community work in Berisso and Ensenada, while Mrs. Abecasis participated, between 1969 and 1971, in political tasks of community development through VEA ("Voluntarios en Acción" or "Volunteers in Action"); iii) Ms. Abecasis was also a member of the Union of Lawyers Association, an organization that, *inter alia*, defended political prisoners and the enforcement of constitutional guarantees for all people; iv) most of the lawyers who were members of the Union of Lawyers Association were imprisoned, murdered or disappeared; v) in 1973, Ms. Abecasis was appointed to the Rectorate of the University of Buenos Aires but in 1974, the University of Buenos Aires was intervened and the intervenor decreed her dismissal; vi) therefore, after remaining within the country, moving from one house to another, out of well-founded fear of

suffering the same fate as her colleagues, Mrs. Abecasis took refuge in Mexico, where she lived from February 29, 1976, until her return to Argentina on April 9, 1984. The petitioner further stated that Mrs. Abecasis was recognized, together with her family group, as a refugee by the United Nations High Commissioner for Refugees (UNHCR) on January 27, 1984.

6. In view of the above, in 2004, Ms. Edit Abecasis requested to be included in the reparation policies carried out by Argentina within the scope of Law 24.043. This request was rejected by resolution issued by the Ministry of Justice and Human Rights, under the National Executive Branch, through Resolution No. 198/08 of February 1, 2008, for which reason she filed the direct appeal provided for in section 3 of Law 24,043. The rejection was based on the fact that, although forced exile was proven, the interpretation made by the administration at the time the resolution was issued was restrictive. The petitioner informed that such interpretation would be contradictory to what had been established in other similar cases. However, the remedy filed against the aforementioned resolution was also rejected on July 28, 2009. The rejection by the Chamber V of the National Court of Appeals for Federal Administrative Matters was based on the fact that the alleged exile situation had not been proven. As a result, an extraordinary federal remedy was filed, which, in a decision dated March 15, 2011, was found not to comply with the formal requirements. Said decision was notified on April 5, 2011.

### **III. FRIENDLY SETTLEMENT**

7. 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 n°. 14.778 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 Graciela Edit Abecasis; and the Argentine Republic, as a State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting by express mandate of Article 99 paragraph 11 of the National Constitution, represented by the Undersecretary for International Human Rights Protection and Liaison and the National Director of International Human Rights Legal Affairs of the National Human Rights Secretariat, Dr. Andrea Pochak and 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 Honorable Commission that they have reached a friendly settlement agreement in the case, the contents of which are set forth below.

#### **I. Background**

On September 29, 2011, Graciela Edit Abecasis filed a petition before the Inter-American Commission for violation of Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention in conjunction with Article 1.1 of the same instrument.

In their complaint, the petitioner states that Mrs. Abecasis, during the civil-military dictatorship that began in 1976, had to go with her family to Mexico into exile, in order to safeguard her life.

Due to these circumstances, Mrs. Abecasis filed an application for the granting of the benefit ruled by Law No. 24.043 before the Ministry of Justice and Human Rights, which was rejected. Her request was also rejected in court.

On June 21, 2019, the IACHR referred the petition to the Argentine State.

On November 4, 2021, the Commission approved Admissibility Report No. 304/21. Therein, it declared the admissibility of the complaint with respect to Articles 8, 24 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the same instrument.

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. Consequently, 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 effect would allow for the petitioner's claim to be recognized as a situation of exile.

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

The State considers that Mrs. Graciela Edit Abecasis was a victim of State Terrorism in the Argentine Republic. Bearing this in mind, in line with IF-2022-59786009-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 she suffered.

## **II. Measures to be adopted**

1. The parties agree that pecuniary reparation will be granted in accordance with the framework established by Law No. 24.043, considering for this purpose the entire length of time during which Mrs. Graciela Edit Abecasis remained in forced exile, according to ruling IF-2022-59786009-APN-DNAJIMDDHH#MJ. That is, from February 19, 1976 to October 28, 1983.
2. The Argentine State undertakes that, within three (3) months as from the publication of the Decree of the National Executive Branch approving this agreement in the Official Gazette of the Argentine Republic, it will issue a ministerial resolution granting the reparation benefit established by Law No. 24.043, without additional costs or expenses. The amount of the reparation will be calculated as of the date of the issuance of the aforementioned ministerial resolution.
3. Once the petitioner submits to the National Administration of Social Security (ANSES) a valid copy of her national identity document and the form (PS.6.298), correctly completed, for requesting the benefit provided for in Law No. 26.913 and signs the affidavit attached as an annex, the Argentine State undertakes to issue the corresponding resolution within three (3) months.
4. The State undertakes to comply with the term established by Article 30 of the rules of Chapter V of Law No. 25.344, as set forth in Executive Decree No. 1116/2000.
5. Upon payment of the reparation established in section II.2 of this agreement, the petitioner waives, definitively and irrevocably, any other pecuniary claim against the State in relation to 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 Branch.

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.

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

### IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

8. 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.<sup>1</sup> 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.

9. 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.

10. As established in clause III of the agreement, and in view of the State's confirmation of June 6, 2023, regarding the issuance of Decree No. 278/2023 of the National Executive Branch approving the FSA, as well as the petitioner's request of August 25, 2023, to move forward with its approval, it is appropriate at this time to assess compliance with the commitments established herein.

11. With regard to clause II.2, on the issuance of the ministerial resolution granting the reparation benefit provided for in Law No. 24.043, the Commission observes that, on September 26, 2023, the State informed that on July 10, 2023, the Minister of Justice and Human Rights of the Nation issued resolution RESOL-2023-737-APN-MJ, whereby it granted Graciela Edit Abecasis the benefit provided for in Law No. 24,043, establishing the days of compensation 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 on the issuance of the ministerial resolution to make the reparation effective in favor of Mrs. Abecasis, has been fully complied with and so declares it.

12. Likewise, with respect to clauses II.1 (payment of pecuniary reparation), II.3 (resolution under Law No. 26.913) and II.4 (term) of the friendly settlement agreement, the Commission considers that they are pending compliance and so declares it. Therefore, the Commission considers that the friendly settlement agreement has a partial level of compliance and so declares it. In this regard, the Commission will continue to monitor the implementation of the FSA until full compliance is achieved.

---

<sup>1</sup> 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.*

13. 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 full compliance with clause II.2 (issuance of the ministerial resolution granting the reparation benefit provided for in Law No. 24.043) of the friendly settlement agreement, according to the analysis contained in this report.
3. To declare clauses II.1 (payment of pecuniary reparation), II.3 (resolution under Law No. 26.913) and II.4 (term) of the friendly settlement agreement 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 to monitor compliance with clauses II.1 (payment of pecuniary reparation), II.3 (resolution under Law No. 26.913) and II.4 (term) of the friendly settlement agreement, according to the analysis contained in this report. To this end, to 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 20<sup>th</sup> 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, Carlos Bernal Pulido and José Luis Caballero Ochoa, Commissioners.