

TECHNICAL INFORMATION SHEET
CASE N° 11.012 HORACIO VERBITSKY
FRIENDLY SETTLEMENT REPORT N° 22/94
TOTAL COMPLIANCE
(ARGENTINA)

I. SUMMARY OF THE CASE

Victim (s): Horacio Verbitsky

Petitioner (s): CEJIL and Americas Watch.

State: Argentina

Admissibility Report No.: N/A

Report on Friendly Settlement Agreement.: [22/94](#), published on September 20, 1994

Related Rapporteurship: N/A

Topics: Judicial Guarantees /Freedom of thought and Expression/Right to Equal Protection

Facts: On May 5, 1992, the Commission received a petition from Mr. Horacio Verbitsky against the Republic of Argentina. Mr. Verbitsky, a journalist, was convicted for the crime of "desacato" ("contempt") - criminal libel of a public official in the execution of his or her functions) - for allegedly defaming Mr. Augusto Cesar Belluscio, Minister of the Justice Supreme Court. The Argentine authorities considered that the publication of an article wherein the journalist referred to Mr. Belluscio as "asqueroso" or "disgusting" was a crime under Article 244 of the Criminal Code, which establishes the offense of 'desacato'. The petitioner alleged a violation of Articles 8 (right to a fair trial); 13 (freedom of thought and expression); and 24 (right to equal protection).

On March 6, 1988, the petitioner published an article in the *Pagina 12* newspaper, entitled "Scars from Two Wars," in which he used the word "asqueroso" to describe the Argentine Supreme Court of Justice judge Augusto Belluscio in reference to an interview given by Mr. Belluscio where the Minister said, among other things, that a proposed reform to expand the Supreme Court with two additional members "disgusted him." The petitioner alleges that he used the word "asqueroso" in the sense of one who is disgusted, just as the Justice had used it in his interview

As a result of this article, Justice Belluscio filed a private libel suit against the petitioner in the First Instance Federal Criminal and Correctional Court No. 4 of the Capital city. The federal presiding judge ruled that the term used by the journalist Verbitsky went beyond the bounds of honorable treatment of the official and represented an affront to him in the exercise of his function. On that basis, invoking the principle *curia novit lex*, the judge decided to change the initial private lawsuit into a public trial of "desacato" (contempt). The judge convicted Mr. Verbitsky of the intent to defame the Minister of justice.

On July 13, 1991, the Federal Criminal Appeals Court of Buenos Aires upheld the sentence. Subsequently, the petitioner appealed to the Supreme Court via an Extraordinary Appeal, alleging that the ruling threatened the constitutional guarantee of freedom of the press. The Supreme Court rejected the Extraordinary Appeal on February 25, 1992, as inadmissible. The petitioner alleged the violation of rights in Articles 8 (right to a fair trial), 13 (freedom of thought and expression) and 24 (right to equal protection) of the American Convention.

II. PROCEDURAL ACTIVITY

1. In September 1992, the petitioner expressed a wish to begin the process of friendly settlement during the 82nd period of sessions.

2. In a communication dated September 21, 1992, the petitioner informed the Commission on the steps that had been taken in the negotiations with the Government representatives and offered the initial guidelines for a settlement. The representatives asked the Commission to formally initiate the process of friendly settlement.

3. On the same date, the parties signed a friendly settlement agreement.

4. On September 20, 1994, the Commission approved the Agreement and published Report 22/94.

III. ANALYSIS OF COMPLIANCE WITH THE CLAUSES OF THE FRIENDLY SETTLEMENT AGREEMENT

Agreement Clause	Status of Compliance
The petitioner requests the Argentine state to commit itself to repeal of Article 244 of the Criminal Code, establishing the criminal offense of 'desacato'.	<p style="text-align: center;">Total</p> <p>On May 12, 1993, the State of Argentina repealed the criminal offense of 'desacato' from the Argentine Criminal Code by the enactment of national Law No.24.198.</p>
The petitioner requests that once the new law repealing the 'desacato' offense is approved, it be applied in his case with a view to reversing his sentence and cancelling all its effects in accordance with Article 2 of the Criminal Code. The representatives said this would be applied in the present case, as is done in all cases.	<p style="text-align: center;">Total</p> <p>On February 24, 1994, the National Criminal Appeals Chamber annulled the sentence of one month's imprisonment for the offense of 'desacato'.</p>
The petitioner requests fair compensation for the damages and suffered due to the trials. The petitioner expressly waives any indemnity for moral damages. The lawyers involved expressly waive any claim for fees in the case.	<p style="text-align: center;">Total</p> <p>On February 24, 1994, the National Criminal Appeals Chamber also decided not to rule on the restitution of sums representing compensation for moral damages and costs, in light of Mr. Verbitsky's express renunciation.</p>

	Total
<p>The parties request that when the Commission prepares the report referred to in Article 49 of the Convention, it express its view on the compatibility or incompatibility of the 'desacato' offense in the Argentine Criminal Code with the provisions of the Pact of San José, Costa Rica, including an opinion on whether States Parties to that instrument must align domestic legislation in accordance with the Convention's Article 2</p>	<p>In the September 20, 1994, Approval Report, the Commission expressed its view on this issue, stating that when a Law is incompatible with the Convention, the State is obliged to adopt the necessary legislative measures to give effect to the rights guaranteed in the Convention.</p>

IV. LEVEL OF COMPLIANCE OF THE CASE

5. On September 20, 1994, the Commission issued its Report on Friendly Settlement No.22/94, approving the agreement reached between the parties declaring the full compliance of the agreement and concluding supervision of the case.

V. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Individual outcomes of the Case:

- The State decided to annul Mr. Verbitsky's criminal conviction.

B. Structural outcomes of the Case:

- The criminal offense of 'desacato' was abolished from Argentine law, due to incompatibility with the American Convention.