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**REPORT No. 267/23**

**CASE 14.769**

REPORT ON FRIENDLY SETTLEMENT

CLAUDIA LAURA KLEINMAN AND ANA MARÍA KLEINMAN  
ARGENTINA

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**FRIENDLY SETTLEMENT**

**CLAUDIA LAURA KLEINMAN AND ANA MARÍA KLEINMAN**

**ARGENTINA**

**NOVEMBER 30, 2023**

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

1. On February 7, 2011, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Claudia Laura Kleinman and Ana María Kleinman (hereinafter "the alleged victims"), represented by Elena Carmen Moreno and Myriam Carsen (hereinafter "the petitioners"), alleging the international responsibility of the Argentine Republic (hereinafter "Argentina" or "the State"), for the violation of the human rights enshrined in Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "Convention" or "American Convention"), in relation to Article 1. 1 (obligation to respect rights) of the same instrument, to the detriment of Claudia Laura Kleinman and Ana María Kleinman, derived from the violations to due process and the rejection of their request for economic reparation, as a result of their forced exile, filed within the framework of Law No. 24.043.

2. On November 4, 2021, the Commission issued its Report on Admissibility No. 301/21, in which it declared the petition admissible and declared its competence to hear the claim presented by the petitioners regarding the alleged violation of the rights enshrined in Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention in relation to the obligation established in Article 1(1) of the same instrument, to the detriment of Claudia Laura Kleinman and Ana María Kleinman.

3. On July 5, 2022, the parties entered into a friendly settlement agreement and on August 16, 2022, the Commission notified the parties of the commencement of the friendly settlement procedure. On June 9, 2023, the State informed of the issuance of Decree No. 294/2023 of the National Executive Branch approving the respective agreement and requested the approval and publication of the agreement. In turn, on August 31, 2023, the petitioners requested the Commission the corresponding homologation, as established in the FSA.

4. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Rules of Procedure of the Commission, contains a summary of the facts alleged by the petitioners and a transcription 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 to the General Assembly of the Organization of American States.

**II. THE FACTS ALLEGED**

5. The petitioner denounced the lack of reparations to Mrs. Ana María Kleinman and Mrs. Claudia Laura Kleinman for the damages caused to them and their family by the persecution they claim to have suffered during the 1970s and the consequent forced exile; as well as the denial of justice for violation of judicial guarantees, judicial protection, and equality and non-discrimination in the framework of civil proceedings based on Law No. 24.043.

6. The petitioner argued that Ana María Kleinman and Claudia Laura Kleinman and their family were victims of the civilian-military dictatorship that ruled the Argentine Republic between 1976 and 1983. As reported by the petitioner, in summary, Ana María Kleinman and Claudia Laura Kleinman were born on October 5, 1974 and August 24, 1976, respectively, and are the daughters of Graciela Isabel Dubcovsky and Osvaldo Hugo Kleinman. Graciela was a student activist, and Osvaldo was a union activist working in a fiber cement

factory in Greater Buenos Aires. In 1974, security forces broke into the couple's home, in their absence, and also into their workplace, registering them as fugitives in the files of the Intelligence Directorate of the Buenos Aires Province Police, even though there was no warrant for their arrest issued by a judge. Days before, security forces had proceeded to arrest Graciela's brother, Gerardo Arturo Isaac Dubcovsky, who was also a student activist. He was kept in detention until he was able to exercise the option to leave the country.

7. After the events of 1974 Osvaldo and Graciela decided to change their home and work. They continued to live in Argentina studying at university until July 7, 1976 when another brother of Graciela's, Pablo Andrés Dubcovsky, a 17 year old high school student, was kidnapped and is still missing. The disappearance of Pablo Andres, added to the fact that security forces searched for his parents, motivated the family to leave the country. In Brazil, Graciela was recognized by the United Nations High Commissioner for Refugees (UNHCR) as a refugee. Graciela then settled in Italy, where she pursued advanced studies in medicine, later settling in Mexico and returning to Argentina with the restoration of democracy in her country of origin.

8. In view of the above, the alleged victims filed applications for the benefit regulated by Law No. 24.043, which were processed by Files No. 1160.194/07 and 160.193/07 of the registry of the Ministry of Justice and Human Rights of Argentina, considering that the events experienced or imposed by the dictatorship on the family group, with repercussions on the lives of the aforementioned sisters, should be repaired. However, the requests were rejected by Resolution No. 2498/08.

9. They filed appeals against the decision before the National Chamber of Appeals for Federal Administrative Litigation Matters, which were rejected. As a result, they filed an extraordinary federal appeal before the Chamber, which dismissed them on the grounds that they did not comply with the requirements set forth in article 1 of Agreement 4/2007, regarding the formalities for filing the appeal.

10. The petitioner indicated that on August 25, 2011, the Ministry of Justice and Human Rights of the State of Argentina granted Mrs. Graciela Isabel Dubcovsky, by means of Resolution No. 242, the benefit of Law 24.043 by virtue of events that occurred between September 5, 1977 and December 10, 1983. The petitioner argues that the decision was based on exactly the same evidence as that used to deny the benefit to the complainants, which in itself corroborates that the unequal treatment and violation of the guarantees and rights that Argentina assumed upon acceding to the Convention not only occurs in relation to third parties in essentially identical situations, but also to the complainants' own mother, and in relation to the same facts that involved the entire family group, and established by the same and exact evidence.

### **III. FRIENDLY SETTLEMENT**

11. On July 5, 2022, the parties signed a friendly settlement agreement, which establishes:

#### **FRIENDLY SETTLEMENT AGREEMENT**

The parties in Case No. 14.769 of the registry of the Inter-American Commission on Human Rights (hereinafter "IACHR" or the "Inter-American Commission"): Ana María Kleinman, Elena Carmen Moreno and Myriam Carsen, in their capacity as attorney-in-fact and sponsoring counsel, respectively, for Claudia Laura Kleinman; and the Argentine Republic, as a State party to the American Convention on Human Rights (hereinafter the "American Convention"), acting under the 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 Secretariat of Human Rights, 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, respectively, 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 February 7, 2011, Claudia Laura and Ana María Kleinman filed a petition before the Inter-American Commission for violation of Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention in relation to Article 1(1) of the same instrument.

In their complaint, the petitioner states that, because of the union activism and the political and student militancy of their parents and uncles, their family was the victim of persecution and threats during the last civil-military dictatorship. They point out that, for this reason and in order to safeguard their lives, the family was forced into exile, first in Brazil, then in Italy, and finally in Mexico.

By virtue of these facts, Mrs. Kleinman and Mrs. Kleinman 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. Their claim was also rejected in court.

On April 12, 2017, the IACHR notified the petition to the Argentine State.

On November 4, 2021, the Commission approved its Report on Admissibility No. 301/21. 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 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. 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 Reparations Policy Management to determine whether the criteria currently in force would allow 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 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 Claudia Laura and Ana María Kleinman were victims of political persecution by the civil-military dictatorship that devastated the Argentine Republic between March 24, 1976 and December 10, 1983. In view of this, in line with IF-2022-59784416-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 petitioners are entitled to adequate reparation for the violations they 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 Mrs. Claudia Laura and Ana María Kleinman remained in forced exile, according to ruling IF-2022-59784416-APN-DNAJIMDDHH#MJ. That is, from May 31, 1977 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, the ministerial resolutions granting the reparation benefit provided for in Law No. 24,043 shall be issued, without additional costs or expenses. The amount of the reparation shall be calculated as of the date of the issuance of such ministerial resolution.

3. Once the petitioner submits to the National Social Security Administration (ANSES) a true copy of the national identity documents and the form (PS.6.298) requesting the benefit provided for in Law No. 26.913 correctly completed, as well as signs the sworn statement that accompanies it as an annex, the Argentine State undertakes to issue the corresponding resolutions within a term of 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 waives, definitively and irrevocably, any other pecuniary claim against the State in relation to the facts that gave rise to the instant case.

### III. Signature *ad referendum*

The parties state that this agreement must 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.

Three copies with the same content 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

12. 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.

13. 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.

14. As established in Clause III of the agreement, and in view of the State’s confirmation dated June 9, 2023 regarding the issuance of Decree No. 294/2023 of the National Executive Branch approving the Friendly Settlement Agreement on June 5, 2023, as well as the request of the petitioning party dated August 31,

<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.*

2023 to move forward with its homologation, it is appropriate at this time to assess compliance with the commitments established in this instrument.

15. With regard to clauses II.1 (payment of pecuniary reparation), II.2 (resolution under Law 24,043), 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. Therefore, the Commission considers that the friendly settlement agreement is pending compliance and so declares. In this regard, the Commission will continue to monitor the implementation of the Friendly Settlement Agreement until full compliance.

16. Finally, the Commission considers that the rest of the content of the agreement is of a declaratory nature, and therefore does not fall under its supervision.

## **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 compliance to be pending with regard to clauses II.1 (payment of pecuniary reparation), II.2 (resolution under Law 24,043), 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.
3. To declare that the friendly settlement agreement is pending compliance, according to the analysis contained in this report.
4. To continue to monitor compliance with clauses II.1 (payment of pecuniary reparation), II.2 (resolution under Law 24,043), 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.
5. To publish this report 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 30<sup>th</sup> day of the month of November, 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.