

TECHNICAL INFORMATION SHEET
CASE Nº 11.670 AMÍLCAR MENÉNDEZ AND OTHERS
FRIENDLY SETTLEMENT REPORT Nº 168/11
TOTAL COMPLIANCE
(ARGENTINA)

I. SUMMARY OF THE CASE

Victim (s): Amílcar Menéndez, Juan Manuel Caride and others¹

Petitioners (s): Amílcar Menéndez and Juan Manuel Caride²

State: Argentina

Admissibility Report No.: **03/01**, published on January 19, 2001

Friendly Settlement Agreement Report No.: **168/11**, published on March 23, 2011

Related Rapporteurship: N/A

Topics: Judicial Guarantees/ Judicial Protection/ Right to property/ Right to equal protection/ right to judicial protection.

Facts: The petitioners alleged that during the processing of the readjustment petition of their social security benefits by ANSES [National Social Security Administration] and subsequently before the national courts of law, they were subjected to interminable administrative and judicial proceedings, which in most instances were unsuccessful at providing for the rights to which they were entitled. Additionally, Articles 16 and 22 of Law 24.463, known as the “Social Security Solidarity Law,” allow the State to deny payment on the grounds of budget resource constraints and indefinitely put off collection of the social security benefit readjustment. Consequently, judicial proceedings involving claims for readjustment or setting of social security benefits were excessively long from the time of the initial administrative claim until settlement and the attendant payment under final judicial disposition. They also contended that even after final judgments were handed down, with the status of *res judicata*, the State agency in charge of enforcing said judgments, ANSES, had put up countless obstacles to achieve the final payment. Additionally, they claimed that enforcement of Law 24.463 has further exacerbated the plight of retirees. This is because, during benefit readjustment or benefit- setting proceedings, ANSES argued that budget constraints prevented them from complying with the court decision granting the claim, which was then expanded to include similar cases (Article 16). In such cases, ANSES was able to introduce as expert evidence a report of the Office of the General Auditor of the Nation (Article 17), as well as the allegations of budget resource constraints. on compliance with the rulings against the Social Security Administration (Article 22). This situation leads to retirees who died without their right to enjoy a dignified old age ever being provided for.

¹ The Admissibility Report of January 19, 2001 admitted 17 petitions from the following persons: Daniel Acevedo; Eduardo Agro; José Heribe Agrofoglio; Pedro S. Ambrosetti; Enrique Domingo Amodeo; Roberto Balciunas; the widow of Juan Manuel Caride (Caride died on December 5, 1999, his widow is the beneficiary of the pension and successor to his social security rights); the heiress of Antonio Carmona (Carmona died on February 9, 1995 and his widow subsequently died. Currently, his daughter, Lidia Angélica Carmona, is the beneficiary of the pension and successor to his social security rights); the widow of Angel Amadeo Cañaha (Cañaha died on February 22, 2002, his widow is the beneficiary of the pension and successor to his social security rights); the widow of Amílcar Menéndez (Menéndez died on August 8, 1998, his widow is the beneficiary of the pension derived from his death and successor to his social security rights); Vittorio Orsi; Angela Otero; the widow of Amancio Modesto Pafundi (Pafundi died on March 20, 1999, his widow is the beneficiary of the pension derived from his death and successor to his social security rights); Pascual Piscitelli; Eduardo A. Rodríguez Arias; María Elena Solari and the widow of Enrique José Tudor (Tudor died on December 23, 2001, his widow is the beneficiary of the pension derived from his death and successor to his social security rights).

² Subsequently, the Center for Legal and Social Studies (CELS) and the Center for Justice and International Law (CEJIL) were included as petitioners.

Rights Declared Admissible: The Commission concluded that it was competent to hear the present case and that the petition was admissible in accordance with Articles 2 (domestic legal effects), 8 (right to a fair trial), 21 (right to property), 24 (right to equal protection), and 25 (right to judicial protection), in relation to Articles 1.1 and 2 of the American Convention.

II. PROCEDURAL ACTIVITY

1. On November 4, 2009, during the IACHR's 137th period of ordinary sessions, the parties signed a friendly settlement agreement.

2. On January 19, 2011, the Commission approved the friendly settlement agreement in Report No.168/11.

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

Agreement Clause	Status of Compliance
<p>1. Therefore, the State of Argentina – through the National Social Security Administration – commits to adopt all measures necessary to guarantee compliance with the resolutions and regulations decreed as a result of this friendly settlement process, as mentioned in the foregoing paragraph. In particular, these measures must include:</p> <p>a) Strict compliance with all provisions contained in Resolution No. 23 of 2004, of the Secretariat of Social Security, complemented by Resolution No. 955 of 2008 (in force since 13/8/2008) of the Secretariat of Social Security, which is attached to this agreement. Especially that which sets forth that all judgments still awaiting execution, except there be provisions to the contrary contained in the confirmed firm judgment itself, must be fulfilled without other limitations than those provided by the law, pursuant to the provisions of Circular 1. Any other limitation introduced through infra-regulatory interpretations will not be applicable</p>	Total³
<p>b) To formalize a system to liquidate payroll settlements of court judgments (rulings) that will guarantee compliance with the terms and periods specified in the final rulings of the court.</p>	Total⁴
<p>c) Not to appeal court rulings in the trials and appeals in any procedural phase that were ruled in favor of the beneficiaries on allegations on which the Supreme Court has already ruled.</p>	Total⁵
<p>d) To desist, within sixty (60) calendar days of the signing of this agreement, from appeals that have been filed with the Supreme Court or the Federal Chamber of Social Security Appeals contesting judgments in favor of the beneficiaries on allegations on which the Supreme Court has already ruled in similar cases.</p>	Total⁶

³ See IACHR, Annual Report 2013, Chapter II, Section D: Status of Compliance with recommendations of the IACHR, paras. 225-252.

⁴ See IACHR, Annual Report 2013, Chapter II, Section D: Status of Compliance with recommendations of the IACHR, paras. 225-252.

⁵ See IACHR, Annual Report 2013, Chapter II, Section D: Status of Compliance with recommendations of the IACHR, paras. 225-252.

⁶ See IACHR, Annual Report 2013, Chapter II, Section D: Status of Compliance with recommendations of the IACHR, paras. 225-252.

<p>2. The State of Argentina obliges itself to establish a mechanism for the periodic follow-up on the commitments made in this agreement, in which the various public agencies involved will participate, and that this mechanism be coordinated by the Foreign Ministry of Argentina. Except in the case of a special request by any of the parties, working meetings will be held every two months at the headquarters of the Foreign Ministry of Argentina.</p>	<p>Total⁷</p>
<p>3. This mechanism will include the systematic production and systemization – every six months – of essential information for this purpose, with respect to the points of commitment in this agreement: a) liquidation of judicial rulings in favor; b) cases appealed by ANSES; c) the cases desisted by the ANSES before the Supreme Court; and d) compliance with judgments with executions still pending.</p>	<p>Total⁸</p>

IV. LEVEL OF COMPLIANCE OF THE CASE

3. The Commission declared total compliance with the case and ceased monitoring of the friendly settlement agreement in its Annual Report 2013.

IV. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Structural outcomes of the case:

- There was a change of paradigm in the welfare policy in the Argentine Integrated Social Security System (SIPA), such as:
 - The administration went from being mixed system (public or privatized) to being totally State governed;
 - The income is now redistributive;
 - The passive coverage rate stands at 95.1%;
 - the wage replacement rate is 60.8% for profits without moratorium and 52.1% for the total of the system;
 - Advances in the coverage of the most vulnerable population sectors (3.5 million children in family groups in Argentina perceived universal child allowance and 60,000 pregnant women without other coverage were included in the birth allowance for Social Protection);
 - a decrease in the “digital gap” with the donation of netbooks to students in public secondary schools;
 - access to credit for seniors citizens;
 - access to housing with the “Bicentenary Program of Argentine Credit for Single Family Housing”;
 - Financial sustainability.
 - access to justice because the provisions under examination in this case had been repealed and that the settlement of judgments are regulated within the current legal framework, which for the most part has been modified.
- Laws have been amended and aligned with new legal precedents in matters of administrative proceedings for the execution of court rulings.
- A court judgment execution system has been put into place, which has shortened the time it takes to obtain a final disposition in such proceedings, all within a context of institutional transparency through strict and systemic enforcement of the rules of procedure and steady

⁷ See IACHR, Annual Report 2013, Chapter II, Section D: Status of Compliance with recommendations of the IACHR, paras. 225-252.

⁸ See IACHR, Annual Report 2012, Chapter III, Section D: Status of Compliance with recommendations of the IACHR, paras.225-252.

progress in automatizing the settlement system, oversight of proceedings and settlement by conducting random monitoring and safeguarding the public treasury.

- The instruction has been given to the legal representatives of the agency, who are subject to internal control mechanisms, to desist from pursuing any appeals or to expressly consent to judgments that strictly and specifically match the circumstances of fact laid out by the National Supreme Court of Justice up until the time of the signing of the Friendly Settlement Agreement

- The creation of a page on the agency's web site to which beneficiaries and their attorneys can gain access and provide information on any lawsuits or appeals that they consider ANSES has not desisted from, in breach of the terms and conditions of the Friendly Settlement Agreement.

- The State adopted a compliance follow-up mechanism in the present case.