Argentine Republic National Executive Power
2016 - Year of the Bicentenary of the Declaration of National Independence

Resolution

Number: RESOL-2016-670-E-APN-MJ

Buenos Aires, Friday 19 August 2016

Reference: EXP S04:0029662/2016 - EXILE INSTRUCTION

HAVING REGARD to File No. S04:0029662/2016 of the register of this Ministry, Laws Nos. 24,043, 24,411, 25,192, 25,914, 26,564 and 26,913, and Resolution S.D.H. and P.C. No. 1 of 29 January 2016, and

CONSIDERING:

That pursuant to Resolution S.D.H. and P.C. No. 1/16, a survey is being carried out on the status and diagnosis of the processing of files in the area of reparation laws, with special focus on the complexities and effects that the legislative vacuum on "forced exile" has determined in relation to the analogical application of Law No. 24,043 and its amendments.

WHEREAS, the aforementioned Resolution set forth the emergency situation presented by the AD HOC UNIT, created by Resolution S.D.H. No. 4 of January 24, 2005 within the scope of the Coordination of Law No. 24.043, maintaining that *"...it is necessary to reinforce the action of the aforementioned Unit through the unification of interpretation criteria in accordance with the praetorian guidelines that our highest court has been developing in this regard, the doctrine of the PROCURACY OF THE TREASURY OF THE NATION as well as the experience gathered in the processing of reparatory laws"*.

That the state described is corroborated in the report produced on May 4, 2016 by the DIRECTORATE OF MANAGEMENT OF REPAIR POLICIES, which is dependent on the aforementioned Secretariat, where it also reports the existence of the processing of THREE THOUSAND NINE HUNDRED AND EIGHTY-TWO (3982) and THREE THOUSAND THREE HUNDRED AND THIRTY-SIX (3336) files corresponding to the repairs provided for by Laws Nr. 24,043 and 26,564, respectively.

That the temperament assumed by this Administration in the terms transcribed in the first recital, recognized a universe of approximately FIVE THOUSAND EIGHT HUNDRED (5800) administrative files being processed for "forced exile" and consequently, their projected resonance in the courts; causing the tension of the debate -linearly-, in the struggle between the lack of legislation on forced exile and the scope of analogical application of Law No. 24,043.

That as a consequence of the legislative void in the matter, it was evolving through diverse perspectives and scopes, in the analogical application of the Law N° 24.043 to the referred Collective. In this itinerary, the interpretations and decisions elaborated by the operators of the administrative and judicial instances that intervened in the vastness of the presented case, allowed the construction of a praetorian regime that - in the generality of its outline - can be translated in the following postulate: to the ends of the law, the detention is comparable to the ostracism, while the lapse spent in the exile by those people illegally persecuted must be calculated "Yofre de Vaca Narvaja, Susana c/ M° del Interior -

resol. M.J.D.H. 221/00 (expte. 443.459/98)".

That in these proceedings, the Supreme Court of Justice of the Nation has applied, by analogy, the legal provisions intended to provide a basis for extending reparation to cases of exile, thus avoiding the lack of express inclusion of this case in the text of Law No. 24,043

That before this scenario, and with the passing of the years, the PROCURACY OF THE TREASURY OF THE NATION has changed its position on this matter in divergent senses, referring its last doctrine on this subject to the case "Pujadas". In this case, as it arises from the PTN Opinion No. 268 of December 18, 2014, the High Advisory Body - when dealing in general with those situations of "forced exile" determined by reasons of political persecution -, analyzed TWO (2) pronouncements issued by the NATIONAL SUPREME COURT OF JUSTICE and on that basis set out the reasons that would prevent us from deciding, in the absence of an express legal text, which cases are reached by the praetorian construction of our Supreme Court of Justice and which others are not. In view of the above impossibility, he concluded that such issues should go through the necessary stage of debate and evidence that provides a judicial process of complete knowledge, culminating in a ruling issued accordingly.

That notwithstanding, in said case, the witness used by the highest advisory body to establish its current doctrine on the matter, Chamber I of the NATIONAL CHAMBER OF APPEALS IN THE FEDERAL ADMINISTRATIVE MATTERS, in case No. 56578/15, entitled "Pujadas, Víctor c/ Ministerio de Justicia y DDHH s/ recurso directo de organismo externo", recently decided to allow the direct appeal filed by Mr Víctor Pujadas (against Resolution MJyDH No. 1476/15 that had denied him the benefit), the Court referred to the precedent "Yofre de Vaca Narvaja" already mentioned, without having gone through a stage of "debate and evidence", as encouraged by the PROCURACY OF THE TREASURY OF THE NATION.

That this Ministry has been complying with the aforementioned criterion set out in the "Pujadas" case, without having achieved in the courts the correlation expected by the highest advisory body.

That in effect, and as is clear from the report produced by the DIRECTORATE OF JUDICIAL MANAGEMENT dependent on the GENERAL DIRECTORATE OF LEGAL AFFAIRS of this Ministry, the administrative refusals resolved on the basis of the aforementioned doctrine, received by forceful response of the judicial scenario - through a majority of sentences -, the denial of the authorization of evidence and debate advocated by PTN Opinion No. 268/14 and at the same time, the reiterated analogical application, to recognize forced exile in the terms of Law No. 24.043.

That this judicial practice has remained invariable as well as the consequent generation of the increase of costs and expenses imposed on the NATIONAL STATE, as it has been lost in its position.

That according to the aforementioned report, in matters of legal proceedings for forced exile, from 2013 to date, THREE HUNDRED AND FIFTY (350) sentences have been handed down against the NATIONAL STATE, against a total of FIFTY THREE (53) in favour of the Administration.

That there is thus a clear judicial doctrine in the sense of the admission of the reparatory regime embodied in Law No. 24,043 and its amendments, in cases of forced exile duly proven and preceded by situations of illegal detention and/or persecution that would have generated in those involved, a well-founded fear of experiencing a serious risk to their lives, physical integrity and/or personal freedom. It should be added that the above-mentioned favorable rulings were due solely to the fact that the claimants were unable to prove such circumstances, their departure from the country being interpreted as voluntary self-imposed exile.

That in this sense, reasons of public interest and due diligence prevent the tolerance and maintenance of the inertia presented by the described context, imposing in this Administration the urgent assumption of cleaning up the inefficiency revealed in the procedural disposition applied to the treatment of claims for forced exile.

That, as a consequence, it is necessary to depart from the referred doctrine "Pujadas" of the PROCURACY OF THE TREASURY OF THE NATION, and to make operative the apprehension and application of the guidelines of the praetorian doctrine previously mentioned in the case "Yofre", elaborated by the SUPREME COURT OF JUSTICE OF THE NATION, in point to the treatment and analogical application of the Law N° 24.043 to the reparatory claims for "forced exile".

That the doctrine of the PROCURATION OF THE TREASURY of theNACIÓN no es obligatoria para este Ministerio, ante el carácter de Autoridad de Aplicación que surge de la ley above-mentioned (Opinions250:261, 253:289 and 259:18) The High Advisory Body has also pointed out that it is appropriate for the Administration to take into account in its decisions the content of the pronouncements issued by the Judiciary, in particular those issued by the highest court, provided that they are contemporary case law and there is substantial identity between the issues at stake (Opinions252:312).

That the aforementioned analogical application should be integrated, understanding the differences with respect to the affectation of rights between exiles and those actually detained and even those who suffered probation, and should necessarily be weighed in the diversity of its substantialities, when establishing the amount of reparations to be granted.

That in this sense, the constitutional principle of equality, enshrined in article 16 of the NATIONAL CONSTITUTION, must be stressed, which necessarily requires proof that the realities to be compared exhibit similar characteristics.

That consequently, the granting of compensation for the period spent in so-called exile must necessarily respect the nature of the damages suffered by its protagonists, with respect to those who had to endure effective detention or probation by the forces of repression.

That for the above reasons, and in accordance with this policy aimed at the public interest and efficient management, this Ministry will have to step aside, leaving without effect the mechanical and direct application of the quantum of compensation provided for in Article 4, first paragraph, of Law No. 24.043 and its amendments, for the cases of "forced exile"; since the methodology of compensatory calculation practiced in this way neglects to complete the analogical activity that the issue requires, leading to results that enshrine the violation of the principles of equality and reasonability that should govern the reparative activity.

That recognizing a complete compensation for each day spent abroad, exceeds the compensatory purpose intended by the legislator, consecrating a kind of grace or liberality on the part of the State, incompatible with the principles that govern the administration of the national budget and the harmonious sustainability that should be ensured from the remaining state policies.

That the conclusion is collected, among others, from the following parameters of reasonability: (ii) exile has been the disvaluable "consequence" of crimes against humanity, as is the case with effective illegal detention and its entity must be evaluated in the dimension of the legal nature of "the accessory", maintaining by definition, clearly diminished notes with respect to the entity "of the principal" that in the case, is represented by the crimes of Lesa Humanidad, which were its cause, and iii) exile participates in relation to the violation it causes to the right to freedom - in its graduation -, at the following level or rank, to the state of diminishing liberties experienced by the inhabitants of the Republic, who having been detained or not, continued to reside in the country until December 10, 1983 under the conditions of exception, derived from the state of siege.

That as a culmination of the above criteria and their reasonableness to conclude on the equity of

The percentage of application that is fixed analogically for each day of "forced exile" must be taken into account, and must be in accordance with the integrity and harmony that must preside over the constellation of compensations established by the different reparation laws.

That in this task, the foundations that sustained the sanction of Law No. 26,913, whose objective was to recognize the basic right to work, from which the interrupted social security rights -in the case- for those persons who were forced into exile during the years of the military dictatorship, derive. In other words, to compensate for the interruption in working life that also affected the normal processing of employer and pension contributions.

That the compensation value established by this Resolution for each day of "forced exile" converges, is integrated and consolidated in its equity, with the pension of the reparatory regime provided by Law No 26,913; especially valued from its characteristics of permanent, periodic and representative of amounts close to double the minimum ordinary retirement.

That the foregoing imposes on this Ministry, as the authority for the application of Law No. 24,043, the peremptory assumption of the exercise of the powers conferred on it by the matter, consisting of practicing the work of "integration" that comes from the analogical application of Law No. 24,043 and its amendments, to the compensation claims for "forced exile".

That in this sense, the work of integration -from the administrative environment- that is manifested in the present resolution, has the scope of establishing the founding guidelines to justify and fix the benefit of compensation that for each day of "forced exile", will correspond to recognize and compute congruently, by analogical application of the mentioned norm.

That our High Court of Justice has limited its analogical work to filling the legal gap in Law No
° 24,043 and its amendments in view of the absence in its literal sense of the situations for "forced exile" and therefore, it limited itself to establish the terms reached by this kind of reparatory claims. However, the task of analogical integration in the "quantum" that corresponds to assigning each day of "forced exile", matters of an activity inherent to the sphere of attributions that -as an Authority of Application-, the law expressly conferred in its exercise, to this Ministry.

That, by virtue of the grounds and powers invoked, this Ministry must set the value of the benefit for each day of "forced exile" at the percentage of TWENTY-FIVE PERCENT (25%), applied to the value reached by the benefit per day, in accordance with the grounds established in article 4, first paragraph, of Law No 24043, as amended.

That in addition, the survey carried out by the DIRECTORATE OF MANAGEMENT OF REPARATORY POLICIES of the SECRETARIAT OF HUMAN RIGHTS AND CULTURAL PLURALISM and
The benefits for effective illegal detention and forced exile, granted during the period 2013 to May 2016 by this Ministry, in accordance with Law No. 24,043 and its amendments, and its praetorian interpretation, allow us to observe that: i) in the aforementioned period, a total of TWO HUNDRED AND THIRTY-SEVEN THOUSAND ONE HUNDRED AND FOURTEEN THOUSAND (237.114) days for reasons of illegal detention, against a total of EIGHT HUNDRED SIXTY-FIVE THOUSAND TWO HUNDRED FOUR (865.204) days for exile; ii) such payments implied, taking as reference the daily value as of May 31, 2016 for such repairs (PESOS SEVEN HUNDRED SIXTY FORTY CENTS ($ 760.40)) a sum of PESOS ONE HUNDRED EIGHT MILLION THREE HUNDRED ONE THOUSAND FOUR HUNDRED EIGHTY-FIVE ($180,301,485) in
concept of arrests, while for reasons of forced exile the sum of PESOS SIX HUNDRED AND FIFTY SEVEN MILLION NINE HUNDRED AND TWENTY-ONE THOUSAND ($
657,901,121); (iii) these figures reflect that, from 2013 to date, the days recognized and - consequently - the amounts spent by the NATIONAL STATE for forced exile have been one THREE HUNDRED SIXTY-FIVE PERCENT (365%) greater than those recognized and spent for reasons of illegal detention under Law 24,043 and its amendments, a proportion that has

has been increasing over the years.

That such figures demonstrate the budgetary disproportion that was generated by the mechanical and direc application of the "quantum" of compensation provided for in article 4, first paragraph, of Law 24043 and it amendments to cases of forced exile, in contrast to the expenditures incurred by situations of illegal detention

That on the other hand, -by way of hypothesis- if a projection of the totality of the files in process due t forced exile were made, under the criteria of liquidation as of May 31, 2016, they would demand at least th payment of the sum of PESOS NINE THOUSAND FOUR HUNDRED AND NINETY-FIVE MILLIOI EIGHT THOUSAND THREE HUNDRED AND FORTY-FOUR ($ 9,495,008,344).

That this would lead to the relevance of the criteria of reasonableness invoked if they are analyzed within the framework of Law No. 27,198 through which the General Budget of the National Administration for the 2016 fiscal year was approved, and they are appreciated - by way of comparison - with the schedule annexed to Article 47 of the aforementioned law, which provided for a maximum amount of PESOS THOUSAND TWO HUNDRED MILLION ($ 1,200,000,000), in placement of consolidation bonds to meet the benefits of Laws No. 2,000,000.
24,411 (missing / deceased); 24,043 (detained); 25,192 (suppression of civic-military uprising 1956); 26,690 (Israeli Embassy) and 27,139 (A.M.I.A.).

That in this sense, if we continue with the current criteria for the liquidation of the forced exiles, and in the case of resolving all of this group in the current year, it would imply the need to exceed by SEVEN HUNDRED AND NINETY ONE PERCENT (791%) more than what was foreseen by the legislators when it came to predicting the expense (in bonds) of the FIVE (5) reparatory laws, mentioned in the previous consideration, externalizing an economic impact in deviation, which would make it impossible to confront it.

Que por último, cabe agregar que omitir o desentenderse de las implicancias de la ponderación sobre la diversa sustancialidad que advierten los casos de exilio forzado y de detención ilegal efectiva, sin practicar la labor de integración explicitada a lo largo de la presente; es en términos económicos, sostener que este Ministerio y los restantes poderes del Estado involucrados en la materia, se desentiendan del interés público comprometido ante el directo y superlativo impacto negativo que sobre el erario público representa aproximadamente la suma de PESOS SIETE MIL CIENTO VEINTICINCO MILLION ($7,125,000,000).

That this resolution complies in its terms and scope with the restoration and preservation of the public interest that was affected as a result of the omission of the exercise of the powers conferred by Article 8 o Law No. 24043 and its amendments to this Ministry and at the same time, it stops the economic impact tha would lead to the precariousness of the sustainability of state policy on human rights, and allows the maintenance of the remaining reparatory laws, programs to combat gender violence, sexual violence trafficking in persons, and other related protective programs.

That it is appropriate to mention that various bills to regulate this matter have been submitted to the HONORABLE CONGRESS OF THE NATION (among which we can highlight those registered under Files No. S-4526/04 and No. 1747-D-2009), without any of them having been sanctioned to date.

That the SECRETARIAT FOR HUMAN RIGHTS AND CULTURAL PLURALISM and the DIRECTORATE
GENERAL OF LEGAL AFFAIRS of this Ministry have taken the intervention they are responsible for.

That this measure is issued in use of the powers conferred by Article 8 of Law No. 24,043, as amended, in accordance with Article 22 of the Law on Ministries (t.o. 1992), as amended.

That's why,

THE MINISTER OF JUSTICE AND HUMAN RIGHTS RESOLVES:

ARTICLE 1.- The competent areas of this Ministry involved in the processing of applications for the benefit regulated by Law No. 24,043, as amended, invoking situations of "forced exile", are instructed to comply with the following guidelines:

a. Draft resolutions will be submitted to the undersigned to grant the referred benefit, only in those cases in which it has been accredited -with the due evidential support- the existence of situations of exile tha keep substantial analogy with the doctrine established by the SUPREME COURT OF JUSTICE OF THE NATION in the case "Yofre de Vaca Narvaja" (Judgments: 327:4241), as well as the corresponding compensable period.
b. For each day of "forced exile", the percentage of TWENTY-FIVE PERCENT (25%) over the amoun that reaches the benefit per day, established by article 4, first paragraph, of Law No. 24,043, a amended, shall be computed for the purpose of recognition.
c. Projects denying the respective benefit shall be submitted to the undersigned when the points set forth in paragraph (a) of this Article are not met.

The competent areas should reformulate the draft resolutions in process, in order to readjust them to the previous guidelines.

ARTICLE 2 - The General Directorate of Legal Affairs of this Ministry is hereby instructed to request the intervention of the NATIONAL TREASURY PROCURACY to rule on the application of the terms of Article 1 of this Resolution, in relation to those procedures subject to the different stages of judicialization, and in respect of which administrative acts have been issued recognizing the benefit in compliance with previously issued rulings.

ARTICLE 3.- Register, communicate and file.

Digitally signed by GARAVANO Germán Carlos
Date: 2016.08.19 17:00:58 ART
Location: Autonomous City of Buenos Aires

Garavano Germán Carlos
Minister
Ministry of Justice and Human Rights

Digitally signed by GESTION DOCUMENTAL ELECTRONICA - GDE
DN: cn=ELECTRONIC DOCUMENTAL MANAGEMENT - GDE, c=AR, o=MINISTRY OF MODERNIZATION, ou=SECRETARY OF ADMINISTRATIVE MODERNIZATION, serialNumber=CUIT 30715117564
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