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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 108/01; Case 11.574
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Wilberto Samuel Manzano v. Ecuador
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice-President: Juan E. Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie. Commissioner Julio Prado Vallejo, of Ecuadorian nationality, did not participate in the discussion of this case, in keeping with Article 17 of the Commission's Rules of Procedure.
Dated:	11 October 2001
Citation:	Samuel Manzano v. Ecuador, Case 11.574, Inter-Am. C.H.R., Report No. 108/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by:	APPLICANT: Comision Ecumenica de Derechos Humanos
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I. SUMMARY

1. On November 10, 1994, the Comisión Ecuménica de Derechos Humanos (“CEDHU”) (hereinafter “the petitioner”) presented a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Ecuador (hereinafter “the State”) in which it alleged a violation of the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”): the right to life (Article 4), right to a fair trial (Article 8), and the right to judicial protection (Article 25), in violation of the obligations that appear in Article 1(1), to the detriment of Mr. Wilberto Samuel Manzano.

2. The parties arrived at a friendly settlement agreement in this case on August 15, 2001. This report contains a brief presentation of the facts and the text of the agreement, in keeping with Article 49 of the Convention.

II. THE FACTS

3. On May 11, 1991, in the Recinto Almorzadero of the Rosa Zárate Parish of the Quinidé District, province of Esmeraldas, Wilberto Samuel Manzano was wounded by gunshot when he was at a volleyball court, participating in a community meeting. It is presumed that those who fired the shots were police in civilian dress, and they arrested him without a showing of a judicial

warrant. He was taken to the police station of La Unión and then driven to the Quinidé Hospital, where he died. According to the complaint, the autopsy determined that the death was caused by a cardiac arrest brought on by the wound in the gluteus.

4. His family members and those who saw the corpse verified that there were hematomas on the head and chest, thus it is presumed that Wilberto Samuel Manzano was tortured even after he was wounded. In addition, the police report described Wilberto Samuel Manzano as a dangerous criminal, and it noted that the police had an arrest warrant for him on suspicion of robbery, as a basis for the arrest. It is presumed that the persons responsible for the death of Wilberto Samuel Manzano were Santiago Moreira Atahualpa, Wilson Kléyer Albán Rodríguez, and José Muñoz Quintanilla, all rural police. Proceedings concerning these facts were initiated before the Second Judge of the First District Court of the National Police.

5. On May 22, 1995, the Second Judge of the First District Court of the National Police dismissed the charges, with prejudice, against the persons accused in the death of Wilberto Samuel Manzano. The dismissal was appealed by the private accuser on May 23; nonetheless, the District Court of the Police, on September 29, 1995, ratified the dismissal, putting an end to the legal actions for securing punishment for the homicide of Wilberto Samuel Manzano. According to considerations of the petitioner and the prosecutor, the results of the Police Judge and of the District Court were biased in favor of the police accused. It is alleged that the testimony of important witnesses was not taken into account in the proceeding, and that, to the contrary, the judges tried to justify the police actions in their rulings.

6. The petitioner states that in the criminal proceedings it was not shown that there had been any premeditated intent, on the part of the accused, to kill Wilberto Manzano. Nonetheless, he died, and it is conceivable that the authority of the police, set forth in the criminal legislation, to make use of a firearm, as a means of preventing the accused from fleeing, extends to the manner in which it was used in this case. It is indicated that the judges, in their ruling, did not consider applying Articles 235 and 236 of the Police Criminal Code, which punishes unintentional homicide.

III. PROCESSING BEFORE THE COMMISSION

7. On November 10, 1994, the Commission received the complaint in this case. On June 13, 1995, the respective notes were sent to the State and the petitioner. On August 21, 1995, the Government of Ecuador presented its answer to the complaint. On April 29, 1998, the Commission put itself at the disposal of the parties to reach a friendly settlement, which was signed on August 15, 2001, in the presence of Commissioner Marta Altolaguirre, a member of the IACHR and Rapporteur for Ecuador, who had traveled to Quito to facilitate the agreement. The parties asked the Commission to ratify this agreement in all its terms and to supervise its implementation.

IV. FRIENDLY SETTLEMENT AGREEMENT

8. The friendly settlement agreement signed by the parties reads as follows:

I. BACKGROUND

The Ecuadorian State, through the Office of the Attorney General, with a view to promoting and protecting human rights and given the great importance of the full observance of human rights at this time for the international image of our country, as the foundation of a just, dignified, democratic, and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Office of the Attorney General has initiated conversations with all persons who have been victims of human rights violations, aimed at reaching friendly settlement agreements to provide reparations for the damages caused.

The Ecuadorian State, in strict compliance with the obligations it acquired upon signing the American Convention on Human Rights and other international human rights law instruments, is aware that any violation of an international obligation that has caused damages triggers the duty to make adequate reparations--monetary reparations and criminal punishment of the perpetrators being the most just and equitable form. Therefore the Office of the Attorney General and Sister Elsie Hope Monge Yoder, in representation of Mrs. María Eloisa Aguiar de Manzano, mother, and Mrs. Teresa Olivia Izurieta Villegas, widow of Mr. Wilberto Samuel Manzano Aguiar, have reached a friendly settlement, pursuant to the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

II. THE PARTIES

The following persons were present at the signing of this friendly settlement agreement:

- a. For the first party, Dr. Ramón Jiménez Carbo, Attorney General of the State, as indicated in his appointment and certificate of office, which are attached as qualifying documents;
- b. For the second party Sister Elsie Hope Monge Yoder, with citizen identification number 090509576-6, in representation of Mrs. María Eloisa Aguiar de Manzano, mother, and Mrs. Teresa Olivia Izurieta Villegas, widow of Mr. Wilberto Samuel Manzano Aguiar, by special power-of-attorney executed before the Fourth Notary Public of Esmeraldas District, which are attached hereto as qualifying documents.

III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. Wilberto Samuel Manzano Aguiar, recognized in Article 4 (right to life), Article 8 (right to a fair trial), and Article 25 (right to judicial protection), in relation to the general obligation contained in Article 1(1) of the American Convention on Human Rights and other international instruments, considering that the violations were committed by State agents, which could not be disproved by the State, giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case N° 11.574 before the Inter-American Commission on Human Rights and undertakes the necessary reparative steps to compensate the victims, or their successors, for the damages caused by those violations.

IV. COMPENSATION

In view of the foregoing, the Ecuadorian State, through the Attorney General, as the sole judicial representative of the Ecuadorian State, pursuant to Article 215 of the Constitution of Ecuador, enacted in Official Register No. 1 and in force since August 11, 1998, is awarding Sister Elsie Hope Monge Yoder, with citizen identification number 090509576-6, in representation of Mrs. María Eloisa Aguiar de Manzano, mother, and Mrs. Teresa Olivia Izurieta, widow of Mr. Wilberto Samuel Manzano Aguiar, by special power-of-attorney executed before the Fourth Notary Public of Esmeraldas District, a one-time compensatory payment in the amount of thirty thousand US dollars (US\$ 30,000), to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by Mr. Wilberto Samuel Manzano Aguiar, as well as any other claims that Mrs. María Eloisa Aguiar de Manzano, mother, and Mrs. Teresa Olivia Izurieta Villegas, widow of Mr. Wilberto Samuel Manzano Aguiar, or their family members, may have regarding the subject of this agreement, under domestic and international law, and is chargeable to the National Budget. To this end, the Office of the Attorney General will notify the Ministry of Economy and Finance, for it to carry out this obligation.

V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

VI. RIGHT TO SEEK INDEMNITY

The Ecuadorian State reserves the right to seek indemnity, pursuant to Article 22 of the Constitution of the Republic of Ecuador, from those persons found responsible for human rights violations through a final and firm judgment handed down by the country's courts or when administrative liability is found, in keeping with Article 8 of the American Convention on Human Rights.

VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

The payment made by the Ecuadorian State to the other party to this agreement is not subject to any current or future taxes.

VIII. REPORTING

The Ecuadorian State, through the Office of the Attorney General, agrees to report every three months to the Inter-American Commission on Human Rights on compliance with the obligations assumed by the State in this friendly settlement agreement.

In keeping with its consistent practice and obligations under the American Convention, the Inter-American Commission on Human Rights will oversee compliance with this agreement.

IX. LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. Wilberto Samuel Manzano Aguiar, are provided for in Articles 22 and 24 of the Constitution of the Republic of Ecuador, for violation of the constitution, other national laws, and the standards in the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is entered into based on respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments and on the policy of the Government of Ecuador to respect and protect human rights.

X. NOTIFICATION AND CONFIRMATION

Sister Elsie Hope Monge Yoder specifically authorizes the Attorney General to notify the Inter-American Commission on Human Rights of this friendly settlement agreement, so that the Commission may confirm and ratify it in its entirety.

XI. ACCEPTANCE

The parties to this agreement freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that they hereby end the dispute before the Inter-American Commission on Human Rights on the international responsibility of the State for violating the rights of Mr. Wilberto Samuel Manzano Aguiar.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. The Commission determined that the foregoing friendly settlement agreement is compatible with the provisions of Article 48(1)(f) of the American Convention.

VI. CONCLUSIONS

10. The Commission values the signing of a friendly settlement agreement in the terms of the American Convention, on which the State and petitioner reached agreement.

11. The IACHR will continue to monitor compliance with the commitment assumed by Ecuador regarding the proceedings to be brought against the persons implicated in the events alleged.

12. The IACHR ratifies that the option of friendly settlement provided for in the American Convention makes it possible to terminate individual cases in a non-contentious manner, and has proven, in cases regarding several countries, to be an important procedure for resolving alleged violations that can be used by both parties (petitioner and State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To certify compliance by the State with the payment of US\$ 30,000 to the petitioner in this case as compensation.
2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.
3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.
4. To make this report public and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 11, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Hélio Bicudo, Robert K. Goldman, and Peter Laurie.