

REPORT No. 24/13¹
CASE 12.358
FRIENDLY SETTLEMENT
OCTAVIO RUBÉN GONZÁLEZ ACOSTA
PARAGUAY
March 20, 2013

I. SUMMARY

1. On June 30, 1999, the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “IACHR”) received a petition submitted by Guillermo Rubén González Herrera, in representation of his father, Mr. Octavio Rubén González Acosta (hereinafter “the alleged victim”). In the petition he argued that the alleged victim was detained on December 3, 1975, by agents of the then-Department of Investigations of the Police of the capital city, and that his whereabouts have been known since that time. Accordingly, it was reported that the alleged victim was subject to arbitrary detention, torture, and forced disappearance at the hands of state agents.

2. On October 22, 2003, the Inter-American Commission on Human Rights adopted Admissibility Report No. 83/03, in which it decided that the petition was admissible with respect to the rights enshrined in Articles I (right to liberty and life), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man; and with respect to the rights stipulated in Articles 7 (right to personal liberty), 4 (right to life), 5 (right to humane treatment), 8 (right to judicial guarantees), and 25 (right to judicial protection) of the American Convention, and the obligation to respect the rights referred to in Article 1(1) of that treaty. It was also found admissible in relation to Articles I, III, and IV of the Inter-American Convention on Forced Disappearance of Persons.

3. On August 5, 2011, the parties signed a friendly settlement agreement.

4. This friendly settlement report, as established in Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, sets forth a brief statement of the facts alleged by the petitioners and of the settlement reached, with a transcription of said friendly settlement agreement, which was signed on August 5, 2011. Having reviewed the commitments adopted by the parties and their conformity with the principles of the Convention, the Commission decides to approve this report, give notice to the parties, make it public, and include it in the Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

5. On June 30, 1999, the Commission received the case and assigned it case number 12,358. On January 26, 2001, the IACHR forwarded the pertinent parts to the State, which was given 90 days to submit any information it deemed appropriate, in keeping with the Regulations in force at that time. By note of May 21, 2001, the State sent its observations, which were forwarded to the petitioners on May 25, 2001.

¹ Commissioner Rosa María Ortiz, of Paraguayan nationality, did not participate in the deliberations or decision in this petition, as provided for in Article 17(2)(a) of the Commission’s Rules of Procedure.

6. On October 22, 2003, the Commission approved Admissibility Report No. 83/03 on the instant case, which was forwarded to the parties by note from the IACHR of October 27, 2003, in which the IACHR also placed itself at the parties' disposal to reach a friendly settlement agreement. In that report the IACHR found the petition admissible with respect to the alleged violations of the rights enshrined in Articles I, XXV, and XXVI of the American Declaration of the Rights and Duties of Man; and the rights stipulated at Articles 7, 4, 5, 8, and 25 of the American Convention, in relation to the obligations stemming from Article 1(1) of that international instrument; and the rights established in Articles I, III, and IV of the Inter-American Convention on Forced Disappearance of Persons.

7. On December 18, 2003, the petitioners presented a communication to the Commission, indicating their interest in pursuing a friendly settlement process with the State.² By note of April 5, 2010, the Commission asked the petitioners for their observations on the merits. On August 25, 2010, the petitioners reiterated their willingness to pursue a conciliatory agreement on the instant case and reported that they had brought a regular legal action for damages against the State in Paraguayan courts.

8. The State, on October 19, 2010, indicated its willingness to participate in a friendly settlement process; its communication was forwarded to the petitioners. The petitioners, on January 12, 2011, submitted their proposals with respect to the content of a possible friendly settlement agreement in the instant case. On December 28, 2010, the petitioners communicated that they had changed legal representative, and that the new legal representative was Mr. Andrés Ramírez.

9. By communication of April 26, 2011, the State presented information on progress in the friendly settlement process. On August 5, 2011, during the working visit to Paraguay of the country rapporteur, Commissioner José de Jesús Orozco Henríquez, the petitioners and the representatives of the State signed a friendly settlement agreement in the city of Asunción. This information, along with the request to have the agreement certified, was forwarded by the State by communication of October 7, 2011. The Commission sent a communication to the petitioners on October 24, 2011, requesting their observations in this respect. On January 16, 2012, Mr. Andrés Ramírez communicated that he would no longer be a petitioner. On October 31, 2011, the petitioners submitted additional information.

10. On June 5, 2012, the IACHR requested updated information from both parties. On July 5, 2012, the State requested an extension, which was granted by the IACHR. By note of June 28, 2012, the petitioners submitted the information requested; it was forwarded to the State. On August 29, 2012 and October 26, 2012, the State submitted updated information on implementation of the commitments set forth in the friendly settlement agreement.

² On August 1, 2006; January and July 7, 2007, and July 6, 2010, the petitioners requested information on the status of the procedure before the IACHR. The Commission, as it did not have information with respect to the beginning of negotiations between the parties with a view to friendly settlement, on September 18, 2007, September 10, 2008, and August 31, 2010 informed the petitioners that the petition was in the merits stage.

III. THE FACTS ALLEGED

11. The petitioners indicated that Octavio Rubén González Acosta, a carpenter by trade, was detained on December 3, 1975 by agents of the then-Department of Investigations of the Police of the capital city. They added that Mr. González Acosta worked at the Acaray Dam, in the district of Hernandarias, and that the detention occurred at his place of work, without any prior judicial order.

12. They stated that at the time Mr. González Acosta was living with his wife, Ms. Adela Elvira Herrera de González, and their children, then minors, in the area known as Villa San Francisco, in the city of Hernandarias.

13. They allege that after his detention the alleged victim was taken to the offices of the Department of Investigations of the Police, in Asunción, where several persons were able to see him.

14. They indicated that the alleged victim's wife, Ms. Adela Elvira Herrera de González, and the children of the two of them, at the time minors, were also detained for a few days. They add that when she was released she went to the offices of the Department of Investigations of the Police to speak with her husband and find out why he had been detained, but the police authorities did not give her any precise information as to his whereabouts.

15. They indicated that "reliable and qualified persons who were detained at that time at the Department of Investigations state that Octavio Rubén González Acosta was killed during torture by agents of that department."

16. They said that at the Court of First Instance for Criminal Matters of the 7th Circuit, Secretariat No. 14, a case is being processed in relation to the disappearance of Ms. González Acosta. They added that in addition the wife of the alleged victim filed an action on "presumption of death by forced disappearance of a person detained by a Public Authority" that was resolved in her favor on July 14, 2005, by the Court of First Instance of the Ninth Circuit.

17. They also noted that the family of the alleged victim brought a regular action seeking compensation for damages against the Paraguayan State that has yet to conclude.

IV. FRIENDLY SETTLEMENT

18. On August 5, 2011, the petitioners and representatives of the State of Paraguay signed an agreement whose text is as follows:

FRIENDLY SETTLEMENT AGREEMENT CASE No. 12,358 "OCTAVIO RUBEN GONZALEZ ACOSTA"

FIRST: RECOGNITION OF RESPONSIBILITY

The Paraguayan State recognizes its international responsibility for the acts of arbitrary detention, torture, and forced disappearance, perpetrated by state agents in violation of the rights of the direct victim, Mr. Octavio Rubén González Acosta, and of his next-of-kin, his wife, Ms. Adela Elvira Herrera de González, and his children Guillermo and

Mariano González, enshrined in Articles I, XXV, and XXVI of the American Declaration of the Rights and Duties of Man; Articles 7, 5, 4, 8, 25, and 1(1) of the American Convention on Human Rights, and Articles I, III, and IV of the Inter-American Convention on Forced Disappearance of Persons.

SECOND: PUBLIC CEREMONY OF RECOGNITION

The Paraguayan State undertakes to hold a public ceremony of recognition of responsibility for the forced disappearance of Mr. Octavio Rubén González Acosta and publicly apologize to his family members. This ceremony shall be held in the presence of the victim's family members and high-level authorities of the State in the course of 2011.

THIRD: GUARANTEES OF NON-REPETITION

In that regard, the Paraguayan State undertakes to give impetus to the criminal investigation into the facts that gave rise to the violations in the instant case, to identify, prosecute, and if found guilty, punish.

FOURTH: MEASURES OF PRIMARY AND COMPREHENSIVE HEALTH CARE

The State undertakes to provide appropriate treatment required by the family members identified in point I of this agreement, at no cost whatsoever and through the national health service, once they have given their consent to that effect, as of the signing of the Friendly Settlement Agreement, and for the time necessary, including the supply free of charge of medicines available at the Ministry of Public Health and Social Welfare, and in keeping with the administrative regulations issued for cases of human rights violations.

FIFTH: MONETARY REPARATION

The State, through the Office of the Government Attorney for the Republic (Procuraduría General de la República) assumes the commitment to desist from pursuing the objection based on the running of the limitations period in the legal action "Adela Elvira Herrera González et al. v. Paraguayan State re: compensation for damages for tort liability," which is before the Court of First Instance for Civil and Commercial Matters of the 10th Circuit of the city of Asunción, accepting the facts alleged, and leaving it to the Court to determine the quantity of the compensation claimed.

SIXTH: OTHER MEASURES OF REPARATION

The Paraguayan State assumes the responsibility for acknowledging the legitimacy of the Paraguayan Communist Party, prior to the coup d'état of February 2 and 3, 1989, honoring the memory of the direct victim and of the citizens who have been members of that Party.

SEVENTH: PUBLICATION

The State undertakes to publish the terms of this Friendly Settlement Agreement in the Official Gazette and at the websites of the Ministry of Foreign Affairs and the Presidency of the Republic.

EIGHTH: INTERPRETATION

The meaning and scope of this Agreement shall be interpreted in keeping with Articles 29 and 30 of the American Convention on Human Rights, as relevant, and in keeping with the principle of good faith. If there is doubt or disagreement between the parties in this regard, it shall be decided by the Inter-American Commission on Human Rights.

NINTH: CERTIFICATION AND MONITORING

The parties ask the Inter-American Commission on Human Rights to certify this agreement and to monitor it.

The parties understand that the failure to carry out one or more points of this Agreement authorizes the petitioners to continue processing the case in the Inter-American System for the Protection of Human Rights until it is fully concluded.

The foregoing does not stand in the way of the petitioners giving favorable consideration to any request for an extension for the implementation of one or more of the obligations committed to.

Signed in three copies, in the city of Asunción, August 5, 2011.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

19. The IACHR reiterates that according to Articles 48(1)(f) and 49 of the Convention, this procedure has as its purpose “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Its agreement to go forward with this process expresses the good faith of the State for carrying out the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which states must carry out their treaty obligations in good faith. It also wishes to reiterate that the friendly settlement procedure provided for in the Convention makes it possible to end individual cases in a non-contentious manner, and has proven, in cases regarding various countries, to offer an important vehicle for resolution, which may be used by both parties.

20. The Inter-American Commission has closely followed the development of the friendly settlement achieved in the instant case, and highly values the efforts made by both parties to reach this settlement, which is compatible with the object and purpose of the Convention. In particular, the IACHR values recognition by the State of Paraguay, in the agreement signed by the parties on August 5, 2011, of its international responsibility “for the acts of arbitrary detention, torture, and forced disappearance, perpetrated by state agents in violation of the rights of the direct victim, Mr. Octavio Rubén González Acosta, and of his next-of-kin, his wife, Ms. Adela Elvira Herrera de González, and his children Guillermo and Mariano González, enshrined in Articles I, XXV, and XXVI of the American Declaration of the Rights

and Duties of Man; Articles 7, 5, 4, 8, 25, and 1(1) of the American Convention on Human Rights, and Articles I, III, and IV of the Inter-American Convention on Forced Disappearance of Persons". In addition, it especially values the measures of reparation agreed upon and the commitments assumed by the State in this respect.

21. In relation to implementation of the points of the agreement, the IACHR observes that by communication of August 29, 2011, the State reported that:

- **With respect to the first and second clauses:** it has implemented them by holding the Public Ceremony of Recognition of Responsibility, which was held in the Salón de Acres hall of the Ministry of Foreign Affairs on March 20, 2012, with the presence of national authorities, family members of the victim, and special guests.
- **With respect to the third clause:** the Public Ministry had committed itself to forwarding reports and information on the case in Paraguay related to the instant case.
- **With respect to the fourth clause:** the Ministry of Public Health and Social Welfare has reported that the victim's family members are engaged in medical consultations in the 18th Health Region, and that they are being provided the necessary medicines.
- **With respect to the fifth clause:** On August 19, 2011, the Paraguayan State filed the brief desisting from the Objection of the Running of the Limitations Period as a matter to be decided upon before the merits in the proceeding captioned: "ADELA ELVIRA HERRERA DE GONZALEZ ET AL. v. PARAGUAYAN STATE re: DAMAGES FOR TORT LIABILITY/LCOMPENSATION FOR MORAL INJURY." It indicated that said abandonment after the relevant procedures was resolved by the Court of Appeals for Civil and Commercial Matters, Third Chamber, through A.I. No. 196 of April 9, 2012. It indicated that the operative part states: "TO CONSIDER that the Paraguayan State has desisted from invoking the Objection of Running of the Limitations Period as a matter requiring a decision before a ruling on the merits. TO IMPOSE the costs in the abandonment on the respondent and appellant as provided by Article 197 of the Code of Civil Procedure." By communication of October 26, 2012, the State added that it had filed a partial appeal against section A.I. No. 196 of April 9, 2012. It indicates that while the resolution was favorable to the State, it filed an appeal with respect to the costs, which it indicates was denied on April 25, 2012. Accordingly, it notes that in compliance with the fifth clause, the action filed was answered and the State accepted the facts alleged, leaving it up to the Court to quantify the compensation.
- **With respect to the sixth clause:** an express mention has been made of the legitimacy of the Communist Party, in the context of the Public Ceremony of Recognition, on March 20, 2012.
- **With respect to the seventh clause:** publications have been made in the Official Gazette and the website of the Ministry of Foreign Affairs.

22. By communication of June 2012, the petitioners informed the Commission that while the Paraguayan State had accomplished revocation of the resolution of the Court of First Instance that had rejected the objection of running of the limitations period that it itself had raised, with which the court reaffirmed the imprescriptible nature of war crimes and crimes against humanity, in keeping with the national Constitution and international treaties. Nonetheless, they also indicated that the Paraguayan State had subsequently filed an appeal against that ruling, which they indicate was reject *in*

limine for being out of order, as per A.I. No. 249 of April 25, 2012 of the Court of Appeals. They note that the record was remanded to the court of first instance to continue its processing.

23. The Commission reiterates that it highly values the efforts made by the parties to achieve this settlement and declares that it is compatible with the object and purpose of the Convention.

24. The Commission will continue to monitor the implementation of the commitments contained in the friendly settlement agreement, in particular in reference to the progress in the criminal investigation related to the facts of the case, as a guarantee of non-repetition (third clause); and the monetary reparation (fifth clause), processed before the Court of First Instance for Civil and Commercial Matters of the 10th Circuit of the city of Asunción; in the understanding that it implies acceptance by the State of the facts alleged, leaving it up to the Court to quantify the compensation claimed. In addition, it will monitor the measures of primary and comprehensive health care (fourth clause).

VI. CONCLUSIONS

25. Based on the foregoing considerations and in light of the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction with the attainment of a friendly settlement in the instant case, based on the object and purpose of the American Convention.

26. In light of the considerations and conclusions set forth in this Report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on August 5, 2011.
2. To urge the State to take the measures necessary to carry out the commitments still pending.
3. To continue to supervise the implementation of the third, fourth, and fifth clauses of the friendly settlement agreement that was signed, and with that aim in mind, to remind the parties of their commitment to report periodically to the IACHR on its implementation.
4. To make this report public and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 20th day of March 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Belle Antoine, Commissioners.