

REPORT No. 25/13¹
PETITION 1097-06
FRIENDLY SETTLEMENT
MIRIAM BEATRIZ RIQUELME RAMÍREZ
PARAGUAY
March 20, 2013

I. SUMMARY

1. On October 10, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Andrés Dejesús Ramírez (hereinafter “the petitioner”) on behalf of Ms. Miriam Beatriz Riquelme Ramírez (hereinafter “the alleged victim”) and her three minor-aged children M., P., and CME.² The petition alleged the international responsibility of the State of Paraguay (hereinafter “the State” or “the Paraguayan State”) in that Ms. Riquelme was arrested while still breastfeeding her daughter, CME, who was less than four months old at the time, in breach of applicable Paraguayan law. The petitioner contended that although the situation was reported to competent authorities, she was unable to secure domestic judicial protection.

2. The petitioner claimed that the State violated the rights protected by Articles 7 (personal liberty), 8 (right to a fair trial), 9 (freedom from ex post facto laws), 19 (rights of the child), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with Article 1.1 thereof.

3. On August 4, 2011, the parties signed a friendly settlement agreement.

4. This friendly settlement report, in accordance with the terms of Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, offers a summary of the facts alleged by the petitioner and of the friendly settlement reached, including a transcription of the text of the friendly settlement agreement signed on August 4, 2011. After reviewing compliance with the commitments entered into by the parties and their compatibility with the principles of the Convention, the Commission resolves to adopt this report, to notify the parties, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION³

5. On October 10, 2006, the Commission received the petition and recorded it as No. 1097-06. On April 15, 2008, the IACHR conveyed the relevant parts to the State, along with a period of two months in which to submit its comments. In a communication dated June 16, 2008, the State requested an extension, which was granted by the Commission on June 20, 2008.

¹ Commissioner Rosa María Ortiz, a Paraguayan national, did not participate in the discussion or decision of this petition, as provided for in Article 17.2.a of the Commission’s Rules of Procedure.

² Because the alleged victim’s children are minors, the IACHR will identify them by means of their initials to protect their identity.

³ On October 16, 2005, the alleged victim’s legal representative asked the IACHR for the adoption of precautionary measures; that request was denied.

6. By means of a note dated May 6, 2009, the IACHR resent the State its earlier request for information. The State presented its reply to the petition on January 21, 2010, which was forwarded to the petitioner on February 2, 2010, along with a period of one month for him to return his comments.

7. On March 5, 2010, the State submitted a communication reporting the creation of a working team to draw up a proposal for friendly settlement. Similarly, on July 14, 2010, the petitioner submitted information on that development.

8. The State presented further information on June 21 and October 7, 2011. In its communication of October 7, 2011, the State informed the Commission that on August 4, 2011, the parties had signed a friendly settlement agreement. That communication was duly conveyed to the petitioner on October 14, 2011.

9. On January 16, 2012, the petitioner submitted a document to the IACHR indicating the end of his involvement as the petitioner in the processing of the matter before the IACHR. In a communication dated September 26, 2012, the State submitted up-to-date information on the state of compliance with the friendly settlement agreement signed by the parties.

III. BRIEF SUMMARY OF THE FACTS SUBMITTED

10. The petitioner contended that on September 7, 2005, Ms. Miriam Riquelme was arrested in her home by a group of prosecutors and police officers and was taken to the neighborhood prosecution office in Nazareth district for her alleged involvement in an abduction under investigation in criminal proceedings before the 4th Court of Guarantees. The petitioner claimed that at the time of her arrest, Ms. Riquelme was on bail and subject to judicial oversight for her alleged involvement as an accomplice in another criminal case before the 6th Court of Guarantees. According to the petitioner, the 6th Court had awarded Ms. Riquelme bail and she was strictly abiding by its terms.

11. The petitioner reported that on September 8, 2005, Ms. Riquelme appeared before the 4th Court of Guarantees. He stated that in response to the Public Prosecution Service's request for her to be imprisoned, her defense team pointed out the alleged victim's release on bail, her compliance with the terms of the judicial oversight, and the fact that she was at that time a breastfeeding mother on account of the birth of CME and so was covered by the terms of Article 238 of the Paraguay's Code of Criminal Procedure (CPP), which states: "*preventive custody may not be ordered (...) with respect to mothers while they are breastfeeding their children.*" However, according to the petitioner, on September 9, 2005, her preventive custody was ordered, arbitrarily limiting the applicability of that article to a period of ten days.

12. The petitioner stated that as a result, Ms. Riquelme's defense counsel filed a generic habeas corpus remedy, on behalf of her and her daughter, with the Criminal Chamber of the Supreme Court of Justice; that remedy was rejected in judgment No. 829 of September 21, 2005.

13. He reported that on September 22, 2005, the alleged victim's defense requested that the trial judge review the order for her detention and asked that a hearing be held 48 hours later. However, the petitioner reported that the hearing had already been scheduled for the same day (September 22) but that Ms. Riquelme's legal representative was not informed, and so the hearing had to be suspended and reconvened a week later. According to the petitioner, on account of those facts, on

September 23, 2005, Ms. Riquelme's attorney requested that the judge be removed from the case. That request was dismissed by the First Chamber of the Criminal Appeals Court on October 25, 2005.

14. Following that decision, that same day (October 25, 2005), the alleged victim's legal representative requested a review of the detention order still in place against Ms. Riquelme. The petitioner reported that on November 8, 2005, the judge placed the alleged victim under house arrest instead of in reclusion in the women's jail. In response, the Public Prosecution Service appealed, requesting that Ms. Riquelme be transferred to the Casa del Buen Pastor Women's Prison. He reported that on December 2, 2005, the First Criminal Chamber of the Criminal Appeals Court ordered Ms. Riquelme's return to prison, making the benefit of Article 238 of the CPP conditional on a new expert forensic report.

15. The petitioner claimed that at the defense's request, the Court convened a medical board to certify that Ms. Riquelme was indeed lactating. On December 27, 2005, proof positive of her lactation having been established and prior to the review hearing, the court again granted Ms. Riquelme the benefit of house arrest. In response, claimed the petitioner, the Public Prosecution Service filed a new appeal, which was resolved with the cancellation of the house arrest order on January 17, 2006. He also contended that her defense team was not notified of this resolution, which also included an international search-and-arrest warrant against Ms. Riquelme, who was abiding by the terms of her house arrest.

16. He reported that on January 23, 2006, the defense filed a remedy for replacement and an appeal against the resolution; and that on February 7, 2006, the defense lodged an unconstitutionality suit with the First Judicial Secretariat of the Supreme Court for violations of the ban on arbitrary imprisonment and the guarantee of freedom from ex post facto laws, requesting that the challenged resolution be voided. The defense also requested that its effects be suspended, as a precautionary measure.

17. The petitioner claimed that before that unconstitutionality remedy could be resolved, the passage of time had caused an interruption of lactation due to the child CME's lack of contact with her mother. He reported that because of this, the defense team withdrew the remedy on March 13, 2006. The petitioner reported that on April 10, 2006, the Supreme Court of Justice admitted that withdrawal, with which, according to the petitioner, all domestic remedies were exhausted.

18. In consideration whereof, the petitioner requested that the Paraguayan State be declared responsible for violating the rights enshrined in Articles 7, 8, 9, 19, 24, and 25 of the American Convention, in conjunction with the obligations set out in Article 1.1 thereof.

IV. FRIENDLY SETTLEMENT

19. On August 4, 2011, the petitioner, alleged victim, and representatives of the Government of the Republic of Paraguay signed a friendly settlement agreement at a working meeting chaired by Commissioner José de Jesús Orozco, at that time Rapporteur for Paraguay. The text of that agreement reads as follows:

FRIENDLY SETTLEMENT AGREEMENT
PETITION No. 1097-06 "MIRIAM BEATRIZ RIQUELME"

ONE: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Paraguayan State acknowledges its international responsibility for the arbitrary denial of freedom, at a detention center, of Miriam Beatriz Riquelme Ramírez during the breastfeeding of her daughter [...] CME (hereinafter "the child CME"), in contravention of Articles 7.2, 19, and 25 of the American Convention on Human Rights, to the detriment of both, and in breach of domestic law (Article 238 of the Criminal Code) expressly prohibiting such actions.

TWO: PUBLIC RECOGNITION CEREMONY

The Paraguayan State agrees to carry out a public recognition ceremony under the terms of the preceding article and to publicly seek the forgiveness of the family, with due recognition of the confidentiality of the identity of the child CME.

THREE: MEASURES FOR COMPREHENSIVE PRIMARY HEALTH CARE

The State assumes the commitment of providing, free of charge and through the national health services, such treatment as may be required by the child [...] and Mr. Remberto Giménez, her grandfather and guardian.

FOUR: SOCIAL AND EDUCATIONAL MEASURES

The State, through the Ministry of Education and Culture and the National Secretariat for Children and Adolescents, assumes the responsibility of guaranteeing the child CME free education, with professional assistance for the reestablishment and maintenance of ties with her mother.

SIX: OTHER REPARATION MEASURES [sic]

The Paraguayan State, through the Ministry of Justice and Labor, assumes the commitment of processing, with the competent judicial body, the transfer of Ms. Miriam Beatriz Riquelme Ramírez from the penitentiary in the city of Villarrica to the Casa del Buen Pastor Women's Prison to ensure the maintenance of ties with her daughter.

In this same undertaking, Ms. Miriam Beatriz Riquelme Ramírez agrees to respect the prison's administrative provisions governing internal discipline.

SEVEN: PUBLICATION

The State agrees to publish the terms of this friendly settlement agreement in the Official Gazette and on the official web sites of the Ministry of Foreign Affairs and Office of the President of the Republic.

EIGHT: INTERPRETATION

The content and scope of this agreement shall be interpreted in light of Articles 29 and 30 of the American Convention on Human Rights, as applicable, and in accordance with the principle of good faith. Any uncertainty or dispute between the parties shall be decided _____ by _____ the Inter-American Commission on Human Rights.

NINE: VALIDATION AND FOLLOW-UP

The parties ask the Inter-American Commission on Human Rights to validate this agreement and conduct follow-up on it.

The parties understand that noncompliance with one or more points of this agreement shall empower the petitioners to continue with the processing of the case before the inter-American system for the protection of human rights up to its total conclusion.

The foregoing provision does not impede the petitioners from giving favorable consideration to any request for an extension in the deadline for meeting one or more of the obligations entered into.

Signed in four copies, in the city of Asunción, Paraguay, on the Fourth day of August, Two Thousand and Eleven.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

20. The IACHR again notes that pursuant to Articles 48.1.f and 49 of the Convention, the aim of this procedure is “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Accepting this procedure demonstrates the State’s good faith in pursuit of the Convention’s purposes and goals under the principle of *pacta sunt servanda*, whereby states are required to comply in good faith with the treaty obligations they assume. It would also like to note that the friendly settlement procedure provided for in the Convention allows individual cases to be concluded in a noncontentious fashion and that in cases from several different countries, it has served as an important vehicle for resolving disputes that is available to either party.

21. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case, and it applauds the efforts made by both parties to reach this solution, which is compatible with the purposes and goals of the Convention. In particular, the IACHR appreciates the fact that, in the agreement signed by the parties on August 4, 2011, the State of Paraguay acknowledged its international responsibility “for the arbitrary denial of freedom, at a detention center, of Miriam Beatriz Riquelme Ramírez during the breastfeeding of her daughter CME, in contravention of Articles 7.2, 19, and 25 of the American Convention on Human Rights, to the detriment of both, and in breach of domestic law (Article 238 of the Criminal Code) expressly prohibiting such actions.” It also particularly commends the reparation measures agreed on and the commitments assumed by the State in connection therewith.

22. Regarding compliance with the points of the agreement, the IACHR notes that by means of a communication of September 26, 2012, the State reported, in connection with:

- **The second commitment assumed**, related to the ceremony of acknowledgement of responsibility, that the relevant internal consultations with the ranking authorities had been carried out and that they were waiting for the selection of the date for the ceremony to take place.
- **The third commitment**, related to measures for comprehensive primary health care, that the child CME receives medical assistance twice a month from officials belonging to the XVIII Capital Health Region and that she is provided with the medicines needed for her health. It also reported that the relevant steps were being taken to provide her with psychological assistance. In addition, Paraguay reported that her siblings were receiving medical assistance, as was her grandfather, who was also being provided with the medicines he needs.
- **The fourth commitment**, dealing with educational measures, by means of a note dated August 5, 2011, Paraguay reported that the child CME had been given a scholarship at the Nuestra Señora del Perpetuo Socorro Basic School (No. 1040).
- **The fifth commitment**, related to other reparation measures, that on August 7, 2012, Ms. Miriam Riquelme was transferred to the Misiones Regional Penitentiary at her express request.

23. On February 27, 2013, Ms. Miriam Beatriz Riquelme informed the IACHR that she believed that the terms of the friendly settlement agreement signed with the State of Paraguay had been met as regards the reparation measures agreed on for her and her daughter.

24. The IACHR applauds the steps the State is taking to implement the friendly settlement agreement.

25. The Commission will continue to monitor compliance with the commitments set out in the friendly settlement agreement, in particular as regards the organization of the public ceremony to acknowledge responsibility and the continuity of the health care and educational scholarship.

VI. CONCLUSIONS

26. Based on the above remarks and in light of the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission would like to reiterate its deepest appreciation of the efforts made by the parties and its satisfaction at the realization of a friendly settlement agreement in the case at hand, based on the purpose and goals of the American Convention.

27. In consideration of the comments and conclusions set out in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**DECIDES:**

1. To approve the terms of the agreement signed by the parties on August 4, 2011.
2. To encourage the State to take the steps necessary to implement the commitments still pending.
3. To continue monitoring compliance with each and every one of the items in the agreement as signed.
4. To publish this report 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.