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**REPORT No. 333/20**

**CASE 13.421**

FRIENDLY SETTLEMENT

GEMINIANO GIL MARTINEZ AND FAMILY  
COLOMBIA

Approved by the Commission at its session No. 2192 held on November 19, 2020.

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Colombia. November 19, 2020.

**REPORT No. 333/20**  
FRIENDLY SETTLEMENT  
GEMINIANO GIL MARTINEZ AND FAMILY  
COLOMBIA  
NOVEMBER 19, 2020

**I. SUMMARY AND RELEVANT PROCEDURAL ASPECTS OF THE FRIENDLY SETTLEMENT PROCESS**

1. On December 21, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition presented by Jesús Arcángel Alonso Guzmán (hereinafter “the petitioners”), against the Republic of Colombia (hereinafter, “the State” or “the Colombian State”) in which the international responsibility of the State was alleged in relation to the duty to prevent the kidnapping, subsequent murder, a lack of clarity regarding who authored the events, and unjustified delay in the criminal investigation to the detriment of Mr. Geminiano Gil Martínez and family. Later, Rigoberto Olivella Arzuaga assumed the representation of the victim's next of kin.

2. The petitioners alleged that the Colombian State was responsible for the violation of the rights enshrined in Articles 1.1 (obligation to respect rights), 4 (right to life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees) and 25 (guarantees of judicial protection) of the American Convention on Human Rights (hereinafter “Convention” or “American Convention” or “ACHR”).

3. On October 26, 2017, the IACHR issued Admissibility Report No. 141/17. In its report, the IACHR concluded that it was competent to declare the petition under study admissible, in relation to Articles 4 (right to life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees) and 25 (guarantees of judicial protection) of the Convention, in relation to its Article 1.1 (obligation to respect rights) of the American Convention.

4. On April 26, 2019, the petitioning party expressed its interest in engaging in a friendly settlement, an offer that was accepted by the State on July 18, 2019. On August 2, 2019, the parties forwarded a Memorandum of Understanding to initiate the friendly settlement, which materialized with the signing of a friendly settlement agreement (hereinafter “FSA” or “agreement”) on December 4, 2019, in order to resolve the complaint filed before the IACHR outside of contentious proceedings.

5. On July 2, 2020, the parties jointly requested approval of the friendly settlement agreement from the Commission.

6. In this friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission's Regulations, a review of the facts alleged by the petitioner is made and the friendly settlement agreement signed on December 4, 2019, by the petitioners and representatives of the Colombian State is transcribed. Likewise, the agreement signed between the parties is approved and the publication of this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States is agreed.

**II. THE ALLEGED FACTS**

7. The petitioning party alleged that on December 6, 1989, Mr. Geminiano Gil Martínez was kidnapped when he was traveling from Granada, Department of Antioquia, to a camp located in the village of Santa Ana, for work reasons. It was also noted that on December 8, 1989 in the morning hours, the victim's wife received a call from an unidentified person, who informed her that her husband had been kidnapped along with another person. Later, in the afternoon, the authorities of the municipality of Guatapé found the body of the victim, along with the body of another person, and reported that he had died because of a gunshot wound to the head, possibly at the hands of armed groups. Additionally, on December 10, 1989, a press release was

published in the national newspaper "El Espectador" stating that the kidnapping had been carried out by members of the National Liberation Army.

8. Additionally, the petitioning party reported that after the events an investigation was initiated before the Criminal Investigation Court of Guatapé and that on February 5, 2007, a right to petition was filed with the Attorney General's Office and the Antioquia Sectional Prosecutor's Office, requesting information on the investigation, which had begun in December 1989, into the alleged kidnapping and subsequent homicide of Geminiano Gil Martínez. The petitioning party highlighted that the Prosecutor's Office reported that there was no record of the facts and that according to the Municipal Criminal Court of Guatapé, the proceedings were forwarded, on March 28, 1990, to the 61st Criminal Investigation Court of the Municipality of San Rafael, which also had no record of the case. In addition, the petitioning party reported that it filed a direct reparation action against the Judicial Branch and the Office of the Attorney General of the Nation, as exhibited by an Order dated April 14, 2009, which was still pending a final judicial decision at the time of the presentation of the petition.

9. Finally, the petitioners indicated that the Colombian State failed to comply with its duty to investigate, punish and repair the victims because of the failure to carry out the corresponding criminal actions. It also reported that at the time the petition was presented, 18 years had elapsed since the death of the victim without the perpetrators having been punished. Likewise, it pointed out that the events occurred in the context of the internal armed conflict and generalized insecurity in Colombia during the 1980s, specifically in the Department of Antioquia, and within the framework of a public policy of impunity.

### **III. FRIENDLY SETTLEMENT**

10. On December 4, 2019, the parties signed a friendly settlement agreement that establishes the following:

#### **FRIENDLY SETTLEMENT AGREEMENT CASE 13.421 GEMINIANO GIL MARTÍNEZ AND FAMILY**

On December 4, 2019, in the city of Bogotá DC, María del Pilar Gutiérrez Perilla Advisor to the Directorate of International Legal Defense of the National Agency for Legal Defense of the State, who acts on behalf of the Colombian State, hereinafter "Colombian State", and on the other hand, Rigoberto Olivella Arzuaga, who acts as petitioner in this case, and who will be referred to as "the petitioner" hereinafter, sign this Friendly Settlement Agreement in Case No. 13.421 Geminiano Gil Martínez y Familia, processed before the Inter-American Commission on Human Rights.

#### **PRELIMINARY CONSIDERATIONS**

1. The facts of the petition refer to the kidnapping of Mr. Geminiano Gil Martínez on December 6, 1989, when he was traveling from Granada - Antioquia to a camp located in the Santa Ana village.
2. Later, in the afternoon, the authorities of the municipality of Guatapé found the body of Mr. Geminiano Gil Martínez along with the body of another person, and reported that he had died as a result of a wound with a firearm projectile.
3. For its part, the Sectional Prosecutor's Office of the Municipality of San Rafael issued an Inhibitory Resolution on November 11, 1992; later the investigation was reopened, on April 16, 2012. Despite the fact that more than twenty years have passed since the presented facts, to date no progress has been made in clarifying what happened.

4. The petitioners filed an action for direct reparation and for improper administration of justice, which is pending a second instance ruling before the Council of State.

5. On December 21, 2007, the Inter-American Commission on Human Rights received a petition presented by Dr. Rigoberto Olivella Arzuaga, in which the international responsibility of the State was alleged for the facts surrounding the murder of Mr. Geminiano Martínez Gil (Sic), as well as the lack of investigation and clarification of the events that occurred.

6. By report No. 141/17 of October 26, 2017, the Inter-American Commission on Human Rights declared the petition admissible in relation to Articles 4, 5, 7, 8 and 25 of the American Convention on Human Rights, in relation to its article 1.1.

7. On July 24, 2019, the Colombian State and the representative of the victims signed a Memorandum of Understanding in order to reach a friendly settlement.

8. In the following months, joint meetings were held to analyze the proposals of both parties in order to reach a friendly settlement agreement.

9. The Colombian State and the representative of the victims decided to sign this Friendly Settlement Agreement, which will be governed under the following terms:

**FIRST: ACKNOWLEDGMENT OF RESPONSIBILITY**

The Colombian State recognizes international responsibility for the violation of Articles 8 (fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights to the detriment of the victim's next of kin, due to the lack of diligence in the investigation of the events that occurred on December 6, 1989, in which Mr. Geminiano Gil Martínez died.

**SECOND: WITHDRAWAL OF THE DIRECT REPAIR ACTION**

Given that the Colombian State and the victims' representative signed this Friendly Settlement Agreement, the petitioner undertakes to desist from the Direct Reparation Action No. 05001233100020090059701 that is being processed in the second instance before the Council of State, Third Section. Likewise, it expressly renounces to file another judicial action at the domestic level regarding the same facts and for the same claims.

**THIRD: SATISFACTION MEASURES**

The State of Colombia undertakes to carry out the following measures<sup>1</sup>:

a) Act of Acknowledgment of Responsibility.

A private act of apology and dignification at the Cathedral of Jesus Christ the Redeemer in the city of Bogotá, led by a high official of the National Government. The act of acknowledgment of responsibility will be carried out with the active participation of the next of kin and the representative of the victims. In it, state responsibility will be recognized in the terms established in this agreement. The Legal Defense Agency of the State, in coordination with the Ministry of National Defense, will be in charge of this event.

b) Delivery of reminders and invitations.

The Presidential Council for Human Rights will be in charge of preparing the reminders and invitations, which will be delivered in the Act of Acknowledgment of Responsibility. These

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<sup>1</sup> Numbering outside of the original text of the friendly settlement agreement.

measures will be agreed upon by the victims and their representatives.

c) Publication of the facts.

The Colombian State undertakes to publish the report under Article 49 of the American Convention on Human Rights issued by the Inter-American Commission on Human Rights that approves the friendly settlement agreement, on the website of the National Agency for Legal Defense of the State, within the term of six months.

#### **FOURTH: PECUNIARY REPARATION**

The State undertakes to apply Law 288 of 1996, once the friendly settlement agreement is homologated through the expedition of the report under article 49 of the American Convention on Human Rights. The aforementioned, with the purpose of repairing the non-pecuniary and material damages that will be proven in favor of the victim's next of kin who have not been compensated through the Contentious-Administrative Jurisdiction, discounting, if applicable, the amounts recognized for reparations administratively. For these purposes, the criteria and amounts recognized by the current Jurisprudence of the State Council will be used.

#### **FIFTH: APPROVAL AND MONITORING**

The parties request that the Inter-American Commission on Human Rights approve this agreement and follow it up.

### **IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

11. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, the purpose of this procedure is "to reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention." The acceptance of carrying out this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the principle *pacta sunt servanda*, by which States must comply in good faith with the obligations assumed in treaties.<sup>2</sup> It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows the termination of individual cases in a non-contentious manner, and has shown, in cases involving various countries, to offer an important vehicle for settlement, which can be used by both parties.

12. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and highly values the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

13. In accordance with the provisions of clause 5 of the friendly settlement agreement and in the joint communication of the parties of July 2, 2020, the parties asked the Commission to issue the friendly settlement report contemplated in Article 49 of the American Convention.

14. The Inter-American Commission considers that clause 1 (Acknowledgment of the Responsibility of the Colombian State), 2 (Withdrawal of the Direct Reparation Action) and 5, (Approval and Follow-up of the friendly settlement agreement) are declarative in nature, therefore it is not up to it to supervise its execution.

15. In relation to literals a and b of the third clause, referring to the performance of a private act of recognition of responsibility and the delivery of reminders and invitations, on July 2, 2020, the parties jointly

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<sup>2</sup> Vienna Convention on the Law of Treaties, U.N. Doc A / CONF.39 / 27 (1969), Article 26: "Pacta sunt servanda". *Any treaty in force is binding on the parties and must be performed by them in good faith.*

informed the Commission that the private act of acknowledgment of responsibility and request for forgiveness was made, on December 21, 2019, around 11:55 a.m., at the *Catedral Castrense Jesús Redentor*. In this regard, the parties stressed that the act of acknowledgment of responsibility was initiated with a liturgical act in commemoration of the 30th anniversary of the death of Geminiano Gil Martínez, which would have been a symbolic event of great relevance for the family. The event was chaired by the Director General of the National Agency for Legal Defense of the State, who on behalf of the Colombian State apologized to the victims and their next of kin for what happened, and acknowledged responsibility under the terms of this agreement. The parties confirmed that in order to comply with the measure, there was consistent communication between the State, the victims, and their representatives, who agreed the details for the implementation of the measure, including the date, time, place, and content of the order for the day, as well as other logistical aspects.

16. Additionally, the parties jointly indicated that the State sent invitations to the event to the victims and their next of kin, and provided a photographic record of the invitations to the IACHR. In the same vein, it was reported that within the framework of the event, 80 reminders and 20 printed invitations were delivered, the designs of which had been agreed between the parties. The parties also provided a photographic record of the agenda and the act, which included the participation of five family members of the victim, the Ministry of Defense and the ANDJE. Therefore, taking into consideration the information provided jointly by the parties, the Commission considers that literals a and b of the third clause of the friendly settlement agreement have been fully complied with and declares so.

17. In relation to literal c of the third clause related to the publication of the homologation report on the ANDJE's website, the Commission understands that said measure must be carried out after the publication of this report, for which reason it is pending compliance and declares it so.

18. In the same sense, in relation to the fourth clause, related to pecuniary reparation, the Commission observes that, according to the mechanism established in Law 288 of 1996, said measure must be complied with once this homologation report has been issued. Therefore, it considers that the measure is pending compliance and declares it so.

19. Finally, the Commission concludes that literals a and b of the third clause of the friendly settlement agreement (private act of apology and delivery of invitations and reminders) have been fully complied with. On the other hand, the Commission considers that paragraph c of the third clause (publication of the homologation report) and the fourth clause (pecuniary reparation) are pending compliance. Likewise, the IACHR will closely monitor the implementation of the other obligations assumed in the agreement, applying the guidelines prescribed in Article 49 of the Convention.

## **V. CONCLUSIONS**

1. Based on the foregoing considerations and by virtue of the procedure established in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction with the achievement of an amicable solution in the instant case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

2. By virtue of the considerations and conclusions set out in this report,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES TO:**

1. Approve the terms of the agreement signed by the parties on December 4, 2019.
2. Declare that literals a) and b) of the third clause of the friendly settlement agreement have been fully complied with (private act of apologies and delivery of invitations and reminders), according to the analysis contained in this report.

3. Declare pending compliance with literal c) of the third clause (publication of the homologation report) and the fourth clause (pecuniary reparations), according to the analysis contained in this report.

4. Continue with the supervision of the third and fourth clauses of the friendly settlement agreement until they are fully complied with, according to the analysis contained in this report. To this end, remind the parties of their commitment to periodically inform the IACHR on its compliance.

5. Make this report public and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on November 19, 2020. (Signed): Joel Hernández García, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena de Troitiño, Julissa Mantilla Falcón and Edgar Stuardo Ralon Orellana, Members of the Commission.