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**REPORT No. 85/20**

**CASE 12.374**

FRIENDLY SETTLEMENT

JORGE ENRIQUE PATIÑO PALACIOS  
PARAGUAY

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

1. On February 26, 2001, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by César Patiño Mignone and Alba Palacios de Patiño, (hereinafter “the petitioners”) alleging the international responsibility of the Republic of Paraguay (hereinafter “the State” or “the Paraguayan State” or “Paraguay”) for violation of the human rights enshrined in Articles 8 (judicial guarantees) and 25 (judicial protection) in relation to Article 1 (obligation to respect) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) at the expense of their son, Jorge Enrique Patiño Palacios (hereinafter “the alleged victim”), of 20 years of age at the time, who was shot to death allegedly by civilians, and the subsequent failure to investigate and punish the parties responsible due to irregularities in the investigation of the events by the police and judicial authorities.

2. On March 16, 2010, the Commission issued Admissibility Report No. 8/10, declaring the petition admissible and the Commission’s jurisdiction to consider the petitioners’ claim of alleged violation of the human rights enshrined in Articles 8 (judicial guarantees) and 25 (judicial protection guarantees) of the American Convention.

3. The parties signed a friendly settlement agreement on November 30, 2012 during a working meeting held in Asunción, Paraguay.

4. The parties held working meetings facilitated by the Commission on August 17, 2016 and October 15, 2019.

5. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, a report containing a brief statement of the facts alleged by the petitioners was issued, and the friendly settlement agreement signed by the petitioners and the Paraguayan State on November 20, 2012 was transcribed. The agreement signed by the parties was also approved, and it was agreed that this report would be published in the IACHR’s Annual Report to the General Assembly of the Organization of American States.

**II. THE FACTS ALLEGED**

6. The petitioners alleged that on October 21, 1994, Jorge Enrique Palacios Patiño, aged 20, was visiting the home of his friend Miguel Rodríguez Trappani and that during that visit he was shot in the head. They also stated that at the time of these events, only three people were present: Jorge Enrique Patiño Palacios, Miguel Rodríguez Trappani, and the latter’s father, Miguel Rodríguez Alcalá Casal.

7. The petitioners stated that on October 24, 1994, Patiño Palacios died because of the gunshot wound after three days in the Intensive Care Unit of the *Sanatorio Americano*. According to the petitioners, their son had been the victim of a homicide perpetrated by the people he was meeting with, and, according to their statement, the motive for the murder had been linked to political activities. According to the petitioners, an attempt had been made to make the incident look like a suicide.

8. The petitioners alleged that there had been a series of irregularities in both police procedure and judicial action. They claimed that the police had not done their due diligence to gather evidence effectively, such as questioning relatives and neighbors, a circumstance that benefitted the alleged perpetrators. According to the petitioners, the police had taken almost three hours to arrive at the scene. Furthermore, the only

immediate forensic examination had been an examination of the tissue surrounding the entry wound, conducted before Jorge Enrique Patiño Palacios underwent emergency surgery.

9. The petitioners stated that, among the irregularities reported, the Criminalist Division had performed the forensic examination without the knowledge of a judge, violating the constitutional mandate of “investigation under court direction.” The petitioners alleged, moreover, that the police report had not been sent to the Judiciary until December 12, 1994, exceeding the legal requirement of a maximum of 72 hours.

10. According to the petitioners, the autopsy of the victim had been performed eight months after his death at the request of the Patiño family, since the judge that oversees the Office of Judicial and Police Investigation had not issued the pertinent orders with the immediacy required in this type of investigation.

11. The petitioners stated that on June 15, 2001, the Criminal Court of First Instance handed down a judgment concerning the death of their son, concluding that Jorge Patiño Palacios had not committed suicide. However, it also found that the guilt of those accused of a punishable act of homicide “could not be determined by a simple process of elimination.” That is to say, despite having concluded that the death of the young Patiño would not have been a suicide, it could not be determined whether any of the other two people who were at the scene had fired the weapon that was the subject of the crime, nor if the death of Patiño was a homicide. Based on these arguments, the court had decided to acquit only Miguel Alejandro Rodríguez Trappani alone, since his father, Miguel Rodríguez Alcalá Casal, also implicated as a defendant, had died during the trial.

12. The petitioners alleged that they had appealed the aforementioned decision and that the Court of Appeals had confirmed the judgment of the Court of First Instance on March 16, 2004. The petitioners had therefore filed a motion to declare it unconstitutional, which was rejected by the Constitutional Court on June 11, 2004, which ruled that even under the assumption that the Court did not share the criterion used by the Court in interpreting the case, the motion to rule the decision unconstitutional “could not be the vehicle for imposing its own opinion.” In addition, with a view to exhausting all ordinary and extraordinary remedies, on May 11, 2004, the petitioners had filed a motion for judicial review of the judgment of second instance. This motion was rejected as inadmissible by the Criminal Chamber of the Supreme Court of Justice on December 12, 2005.

13. The petitioners stated that they considered the investigation into the death of their son, Jorge Enrique Patiño Palacios, lacking in seriousness, impartiality, and effectiveness and because of this, had claimed that there had been an unjustified delay in the process. The petitioners indicated that they had reported the victim’s death immediately to the authorities in 1994 and that, nonetheless, the judgment of the Court of First Instance had not been handed down until June 2001 and that it had taken the Court of Appeals around three years to render a decision.

### **III. FRIENDLY SETTLEMENT**

14. On November 30, 2012, the parties met in Asunción, Paraguay, and in the course of that meeting signed a friendly settlement agreement in the following terms:

#### **FRIENDLY SETTLEMENT AGREEMENT CASE NO. 12.374 “JORGE ENRIQUE PATIÑO PALACIOS”**

##### **CLAUSE 1: ACKNOWLEDGMENT OF RESPONSIBILITY**

The Paraguayan State acknowledges its international responsibility for the violation of due process and the judicial guarantees enshrined in Articles 8 and 25 of the American Convention in case 12.374, “Jorge Enrique Patiño Palacios,” regarding the death of Jorge Enrique Patiño Palacios on October 24, 1994. In the proceedings opened as a result of the death of Jorge Enrique Patiño Palacios, the State failed to conduct investigations that adhered to the standards of due diligence, also exceeding reasonable time frames for the investigation. This resulted in unjustifiable delays due to the failure to respect the terms expressly stated in the

Republic of Paraguay's Criminal Code of Procedure and the reluctance to issue a judgment seen in the successive excuses not expressly contemplated in trial law that were made in every Court for the Administration of Justice, affecting the determination of the corresponding responsibilities for the acts recognized in the respective judicial file and failing to comply with international normative instruments that the Paraguayan State had pledged to respect.

#### **CLAUSE 2: RENUNCIATION OF ANY FORM OF PECUNIARY COMPENSATION**

The relatives of Jorge Enrique Patiño Palacios formally renounce the receipt of any pecuniary compensation.

#### **CLAUSE 3: GUARANTEES OF NON-REPETITION**

The Case No. 12.374, "Jorge Enrique Patiño Palacios," demonstrates the lack of diligence in the actions of the authorities charged with investigating the punishable acts in the course of the proceedings brought before Paraguayan justice:

Therefore, to guarantee non-repetition of acts such as those reported in the case, the institutional capacity of the State agencies that perform these tasks must be strengthened, and in this regard, the State makes the following commitment:

1. The Paraguayan State, through the Supreme Court of Justice, commits to issuing biennial requests for reports on the procedural status of the cases before every court in the country to verify strict compliance with the deadlines and terms established in procedural law, and should violations of these principles be observed, to impose the respective penalties and, depending on the gravity of the acts, report them to the Jury for the Prosecution of Magistrates, continuing to report until all clauses of the agreement have been complied with.
2. Within one year of the signature of this friendly settlement agreement, hold a course or seminar for magistrates of the criminal courts and staff of the Attorney General's Office and the Criminal Investigation Department on international standards of due diligence in investigation and forensic evidence gathering and evaluation, within the framework of specialized courses on State responsibility for judicial negligence or malpractice, which should be offered throughout the Republic of Paraguay.

In both announcing and implementing these courses or seminars, express reference shall be made to this friendly settlement agreement, and it shall be noted that they are being offered in recognition of the State's acknowledged responsibility in this case

The announcements shall be made jointly by the Judiciary and the Attorney General's Office.

3. In keeping with their authority and jurisdiction, the competent judicial authorities shall issue the necessary normative instruments establishing the procedures that must be observed to guarantee the chain of custody of the evidence they have gathered, produced, or received in the course of the criminal proceeding, along with the penalties for non-compliance.

#### **CLAUSE 4: MEASURE OF SATISFACTION**

To honor the memory of Jorge Enrique Patiño Palacios, the State commits to designating, within six months of the signature of this agreement, a hearing room named for the victim in the Palace of Justice and the *Centro de Convivencia Pedagógica Ñemity [Pedagogical Coexistence Center Ñemity]* of the Secretariat for Children and Adolescents, an institution whose mission is to provide education and health services for abandoned children and adolescents in Reducto San Lorenzo.

#### **CLAUSE 5: MODE OF INTERNATIONAL ACKNOWLEDGMENT**

The State commits to publishing the full text of the friendly settlement agreement on the web portals of the Ministry of Foreign Affairs and Judiciary, with a year-long announcement on the website of the Office of the President. Once full compliance is achieved, it will be published in the Official Gazette.

Once full compliance with this friendly settlement agreement has been achieved, pursuant to Article 49 of the American Convention on Human Rights, the respective report of the Inter-American Commission on Human Rights shall be published in the Official State Bulletin (the Official Gazette) and on the web portal of the Judiciary and the Ministry of [Foreign] Affairs.

#### **CLAUSE 6: MONITORING**

To monitor observance of this agreement until effective compliance therewith, each of the parties shall submit a compliance status report to the Inter-American Commission on Human Rights six months after signature of the agreement.

In the event of non-compliance with the previously established terms, reports shall be issued every six months until full compliance is achieved.

#### **CLAUSE 7: INTERPRETATION**

The sense and scope of this agreement are interpreted in pertinent matters and in accordance with the principle of good faith, pursuant to Articles 29 and 30 of the American Convention on Human Rights. In the event of uncertainties or disagreement between the parties on the content of this agreement, the Inter-American Commission on Human Rights shall decide on its interpretation.

#### **CLAUSE 8: APPROVAL**

The parties understand that non-compliance with one or more points of this agreement gives the petitioners the right to continue pursuing the case in the Inter-American system for the protection of human rights until its full conclusion.

This does not prevent the petitioners from favorably considering a request for an extension to comply with one or more obligations assumed.

In the event of full compliance with the friendly settlement agreement, the parties shall request the Inter-American Commission on Human Rights to approve and publish the report, pursuant to the provisions of Article 41.5 of the Rules of Procedure of the Inter-American Commission on Human Rights.

Signed in three copies in the city of Asunción, on the 30th day of November, two thousand twelve.

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

15. The IACHR reiterates that, pursuant to Articles 48.1.f and 49 of the American Convention, the purpose of this proceeding is to reach “a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention.” Acceptance of this undertaking expresses the good faith of the State to honor the purposes and objectives of the Convention under the principle of *pacta sunt servanda*, whereby States

must in good faith meet the obligations assumed under treaties<sup>1</sup>. The Commission also wishes to reiterate that the friendly settlement procedure provided for in the Convention permits the resolution of individual cases in a non-contentious manner and, in cases in different countries, has proven an important vehicle for settling the matter in question that can be used by both parties.

16. The Inter-American Commission has closely followed the implementation of the friendly settlement reached in the current case and greatly appreciates the efforts of both parties during the negotiation of the agreement to reach this friendly settlement that is compatible with the object and purpose of the Convention.

17. In light of the information submitted by the parties until this moment and given the time that has elapsed during the process of negotiation, the Commission must value the fulfillment of the commitments contained in said friendly settlement agreement.

18. The Inter-American Commission appreciates the first declarative clause, which acknowledges the international responsibility of the Paraguayan State for violating the rights of judicial guarantees and judicial protection enshrined in Articles 8 and 25 of the American Convention, at the expense of Jorge Enrique Patiño Palacios. The Commission furthermore takes note of the second declarative clause, whereby the victim's relatives renounce any pecuniary compensation.

19. Concerning points 1 and 3 of clause 3 of the FSA, at a working meeting facilitated by the Commission on October 15, 2019 in Asunción, Paraguay, it was indicated to the parties the need to understand the purpose of clause 3 and to define its legal nature, as well as the object of the provision on the custody of evidence to ensure compliance with the FSA. The parties agreed that the clause would be considered complied with when "a protocol, compendium, or guide to good practice in the chain of custody" had been prepared. Furthermore, concerning point 3.2, on trainings for public officials, during the meeting the petitioners noted the lack of information on both the people who attended the talk and its content. The parties therefore developed a roadmap for facilitating approval of the FSA, in which they agreed to the following:

#### **Road map agreed to on October 15, 2019**

- a. The State shall submit detailed documentation on the issue of training on October 30.
- b. The parties shall meet on October 30 to establish a working group to advance the implementation of clause 3 of the FSA.
- c. The parties agreed that compliance with clause 3 of the agreement shall be understood as fully implemented with the preparation of a protocol, compendium, or guide of good practices on the subject of the chain of custody.
- d. The parties agreed to move towards homologation once compliance with the points agreed on in the roadmap adopted today had been achieved.

20. Concerning points 3.1 and 3.3 of clause 3, on November 22, 2019, the State reported the establishment of a working group with participation of the Supreme Court of Justice, the Attorney General's Office, and the petitioners, charged with preparing a compendium of good practices. The working group met on November 7 and 14 to review the compendium of laws and resolutions prepared by the Supreme Court of Justice. The State informed that within the framework of the working table handed to the petitioners copy of the Academic Guide of the Training Center of the Public Ministry called "*Scientific Investigation of the Punishable Fact in the Prosecutor's Management*" which contains chapters on the investigation in the place in which the facts occurred, handling of evidences, among other topics of interest of the petitioners, and the elaboration of a Protocol of intervention in the handling of custody and evidences was agreed in said space.

21. The information submitted by the State was transmitted to the petitioners who did not present their observations in the time established by the Commission; hence, the roadmap for the

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<sup>1</sup> Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: "**Pacta sunt servanda**". *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

homologation of the FSA dated October 15, 2019 is considered exhausted. Considering the information provided by the parties, the Commission deems that points 3.1 and 3.3 of clause 3 of the FSA have been partially complied with and so it declares it. The Commission awaits the preparation of the final document on good practices with respect to the chain of custody to assess full compliance with these clauses of the FSA, which will be subjected to the follow up mechanism of its Annual Report to the General Assembly of the OAS.

22. Concerning point 3.2 of clause 3 on training in due diligence in investigation and evidence gathering and evaluation, on November 22, 2019, the State provided the information requested by the petitioning party which indicates that on June 7, 8, 14, and 15, 2018 a “*Workshop on Evidence Gathering and Evaluation in Criminal Procedure in Compliance with the Friendly Settlement Agreement in the Jorge Enrique Patiño Palacios Case*” was held in which prosecutors, judicial magistrates, and staff of both institutions participated. The State also disclosed the names and positions of the participants. Considering the information provided by the State, the Commission deems that the State has fulfilled the commitment established in this item of the agreement and therefore declares it fully complied with.

23. Concerning clause 4 on measures of satisfaction, with regard to the designation of a hearing room in the Palace of Justice, the State reported that on July 5, 2013, a ceremony was held in Oral Arguments Chamber N°1 in the Palace of Justice to unveil the commemorative plaque. This ceremony was attended by the Minister of the Supreme Court of Justice, relatives of the victim, and members of the Human Rights Network of the Executive Branch of Paraguay. Concerning the designation of *Centro de Convivencia Ñemity*, the parties agreed to add the victim’s name to that of the facility, which would henceforth be called *Centro de Convivencia Pedagógica Ñemity – Jorge Patiño Palacios*. On October 25, 2013, the ceremony unveiling the sign and plaque in memory of Jorge Patiño Palacios was held at *Centro de Convivencia Ñemity*. On April 6, 2016, during the 157th session of the IACHR, the petitioners stated their willingness to consider this clause of the agreement complied with. Therefore, considering the information provided by the parties, the Commission deems that the State has complied with the commitment made in clause 4 of the agreement and therefore declares it fully complied with.

24. Concerning clause 5, on the mode of international acknowledgment, on February 19, 2014, the Paraguayan State reported that it had published the friendly settlement agreement with the petitioners on the Ministry of Foreign Affairs and Judiciary websites in compliance with the terms of the agreement. In this regard, the Commission corroborated that the information on the friendly settlement agreement reached in this case is publicly available, as agreed<sup>2</sup>. On the other hand, the publication of the approval report in the Official State Gazette (Official Gazette) must be made after the issuance of this report. Hence, considering the information provided by the parties, the Commission deems that the State has partially fulfilled the commitment established in clause 5 of the agreement and so it declares it.

25. The Commission therefore considers that point 3.2 of clause 3 (training on due diligence in investigation and evidence gathering and evaluation) and clause 4 (measures of satisfaction) have been fully complied with and so it declares it. At the same time, the Commission deems that points 3.1 and 3.3 of clause 3 (preparation of a protocol on good practice with regard to the chain of custody) and clause 5 (mode of international acknowledgement) have been partially complied with and so it declares it.

26. Finally, the IACHR deems the remainder of the content of the friendly settlement agreement to be declarative, thus requiring no follow-up.

## V. CONCLUSIONS

1. Based on the aforementioned considerations and pursuant to Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its recognition for the efforts made by the parties and its satisfaction at their reaching a friendly settlement agreement in this case, based on respect for human rights and compatible with the object and purpose of the American Convention.

<sup>2</sup> In this regard, see, website of the Supreme Court of Justice of Paraguay. *Acuerdo de solución amistosa Caso 12.374, Jorge Patiño Palacios*. Available online at: <https://www.pj.gov.py/images/contenido/ddh/acuerdo-solucion-amistosa-jorge-patino-palacios.pdf>

See also, website of the Minister of Foreign Affairs of Paraguay. *Acuerdo de solución amistosa Caso 12.374, Jorge Patiño Palacios*. Available online at: <https://www.mre.gov.py/Sitios/Adjuntos/infodhh/Docs/ASA%20Jorge%20Pati%C3%B1o.pdf>

2. In virtue of the considerations and conclusions indicated in this report,

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

**DECIDES:**

1. To approve the terms of the agreement signed by the parties on November 30, 2012.
2. To declare full compliance with point 3.2 of clause 3 (training on due diligence, investigation, and evidence gathering and evaluation) and 4 (measures of satisfaction) of the friendly settlement agreement, based on the analysis contained in this report.
3. To declare partial compliance with points 3.1 and 3.3 of clause 3 (preparation of a protocol on good practices with regard to the chain of custody) and clause 5 (mode of international acknowledgment) of the friendly settlement agreement, based on the analysis contained in this report.
4. To continue supervision of points 3.1 and 3.3 of clause 3 (preparation of a protocol on good practices with regard to the chain of custody) and clause 5 (mode of international acknowledgment) of the friendly settlement agreement until full compliance has been achieved, based on the analysis contained in this report. To this end, remind the parties of their commitment to report periodically to the IACHR on compliance with them.
5. To publicly disclose this report and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 1<sup>st</sup> day of June 2020. (Signed): Joel Hernández García, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón. Members of the Commission.