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REPORT No. 23/20
CASE 1275-04 A
REPORT ON FRIENDLY SETTLEMENT

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CHILE

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Organization of
American States

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

1. On November 29, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition filed by Adil Brkovic Almonte, then replaced by Julia Urquieta (hereinafter “the petitioners” or “the petitioner”) in which the international responsibility of the Republic of Chile (hereinafter “the State” or “the Chilean State”) was claimed for the facts related to the lack of reparation in a civil proceeding for the detention and subsequent disappearance of Mr. Juan Luis Rivera Matus (hereinafter “alleged victim”) by State agents, on November 6, 1975.

2. The petitioners argued the international responsibility of the Chilean State for the violation of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “American Convention” or “ACHR”) regarding to Article 1.1 of the same instrument. The petitioners claimed that the State had breached the duty to repair adequately the damage caused because its relatives would not have received financial compensation for the violations infringed upon Mr. Rivera Matus.

3. On January 28, 2008, the IACHR received thirteen new complaints related to alleged violations of the human rights of Mr. Juan Luis Rivera Matus and 48 other individuals submitted by the same petitioners. The petitioners alleged the international responsibility of the Chilean State for having applied the figure of the *half prescription or gradual prescription* in criminal matters of article 103 of the Chilean Criminal Code through decisions of the Supreme Court for crimes against humanity. The petitioners alleged that the alleged victims had been arrested, disappeared, or executed politicians during the period of the Chilean military dictatorship, so that the application of the figure contemplated in the criminal code to their sentences would constitute a violation of articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention in relation to Article 1.1. thereof.

4. The IACHR initially decided to accumulate all the petitions, however, they were subsequently separated to allow the negotiation of a friendly settlement agreement, initiating a friendly settlement process to resolve the matter related to P-1275-04 A, regarding the other aspects of the initial petition related to the lack of access to reparations under the a civil trial for the facts related to the detention and subsequent disappearance of Mr. Juan Luis Rivera Matus.

5. On December 6, 2019, after a negotiation process between the parties facilitated by the Commission, the State presented the final draft to pursue a friendly settlement, subsequently materialized with the signing of a Friendly Settlement Agreement (hereinafter “FSA” or “agreement”) on January 31, 2020, in Santiago de Chile. In the agreement, both parties requested its approval and agreed to report in a timely manner on the progress in the materialization of the agreement.

6. As established in article 49 of the Convention and article 40.5 of the Commission's Rules of Procedure, this friendly settlement report presents a summary of the facts alleged by the petitioner, as well as, the transcription of the friendly settlement signed on January 31, 2020 by the petitioner and the representatives of the Chilean State. Likewise, the Commission approves the agreement signed between the parties and agrees to publish this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

¹ Commissioner Antonia Urrejola, a national of Chile, did not participate in the consideration or vote on this case in accordance with Article 17 (2) (a) of the IACHR's regulations.

II. FACTS ALLEGED

7. The petitioner claimed that, on November 6, 1975, Mr. Juan Luis Rivera Matus, a trade union leader, would have been illegally deprived of his liberty by agents of the Chilean State when he was leaving the General Management Building of Chilectra, company in which he worked. As indicated by the petitioners, the alleged victim would have been transferred to a secret detention headquarters called "Remo Cera", which would correspond to the Colina Artillery Regiment. In this place, he would have been held for more than 60 days and would have died as a result of the torture to which he was subjected by his captors, which would constitute a violation of the rights enshrined in articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) in connection with Articles 1.1 (obligation to respect rights) and 63.1 of the American Convention.

8. As alleged by the petitioners, after more than 25 years of uncertainty for the relatives of Mr. Rivera Matus, the Armed Forces, due to a political initiative called the "*Mesa de Diálogo*", would have recognized that security agents, specifically from a group called "*Comando Conjunto*", would have arrested, executed, and thrown into the ocean the body of the alleged victim.

9. However, on April 25, 2001, in the context of a judicial investigation carried out by the Minister of the Court of Appeals of Santiago, a clandestine grave with human remains would have been located in dependencies of Fort Arteaga, owned by the Chilean Army, which according to the expert reports would correspond to Mr. Juan Luis Rivera Matus. Subsequently, the death certificate would have been issued, establishing the date of the death of Mr. Rivera Matus on March 13, 2001.

10. The petitioners indicated that, in addition to the official recognition that would have been made by the Armed Forces on the participation of members of their institutions in the detention, torture, execution, and official concealment of the crime against Mr. Rivera Matus, already in 1991 the National Truth and Reconciliation Commission created through Supreme Decree No. 355, of the Ministry of Justice, would have reached the conclusion that Juan Rivera Matus would have been the victim of a violation of his fundamental human rights, by agents of the State of Chile.

11. Finally, the petitioner argued that the Chilean State would have breached its duty to repair adequately the damage caused. Since the civil lawsuit they filed before the 29th Civil Court of Santiago, titled "Sánchez Olga and others with Treasury of Chile" (Role No. 221-2002), would have been rejected by a judgment of May 27, 2004, issued by the Judge of the same Court considering that, the responsibility of the Chilean State would have prescribed. The petitioners indicated that the Judge would have decided that according to the provisions contained in article 2332 of the Chilean Civil Code², the statute of limitations established in the aforementioned article would have been exceeded. Since the alleged detention by agents of the State of Mr. Juan Luis Rivera Matus would have occurred on November 6, 1975, and the lawsuit filed by their relatives would have been notified on October 1, 2002, exceeding the four-year statute of limitations defined in the Civil Code.

III. FRIENDLY SETTLEMENT

12. On January 31, 2020, the parties signed a friendly settlement agreement, whose text states:

DEFINITIVE FRIENDLY SETTLEMENT AGREEMENT³
CASE 1275-04 A
JUAN LUIS RIVERA MATUS

FIRST: DESCRIPTION OF THE PARTIES

Assenting in the present agreement, the State of Chile (hereinafter "the State"), a State Party to the American Convention on Human Rights (hereinafter "the ACHR" or "the American

²Article 2332 of the Civil Code, states that the action to enforce extra-contractual liability prescribes within four years from the date of the act.

³ Numbering of the clauses outside the original text of the agreement.

Convention"), and on the other hand, the petitioners Ms. Gaby Lucia Rivera Sánchez, Ms. María Angelica Rivera Sánchez, Mr. Juan Patricio Rivera Sánchez, Ms. Jovina del Carmen Rivera Sánchez, Ms. Olga Matilde Rivera Sánchez, Ms. Cecilia de las Mercedes Rivera Sánchez, and Mr. Juan Carlos Rivera Sánchez, who prove that they are the sole successors of Mr. Juan Luis Rivera Matus (hereinafter, "the petitioners"), and that they are represented by Ms. Julia Urquieta.

SECOND: BACKGROUND OF THE PROCESS IN WHICH THIS AGREEMENT IS FRAMED

On November 29, 2004, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a complaint lodged by the lawyer Mr. Adil Brkovic Almonte, then replaced by the Ms. Julia Urquieta, representing the petitioners, against the State. In the complaint, the petitioners allege the violation of Articles 4, 5, 7, 8, and 25, all of them in connection with Article 1.1 of the American Convention, for the detention and subsequent disappearance of Mr. Juan Luis Rivera Matus by agents of the State, on November 6, 1975.

They allege that the State had breached the duty to adequately repair the damage caused, because the petitioners did not receive fair financial compensation for the human rights violations committed against Mr. Rivera Matus. They argue that this occurred after the sentence dated May 27, 2004, delivered by the judge of the 29th Civil Court of Santiago, titled "Sánchez Olga and others with the Treasury of Chile," Role No. 2211-2002, which rejected the civil suit filed by the complainants on May 17, 2002, considering that the civil action to claim the responsibility of the State was prescribed.

On November 30, 2004, the IACHR acknowledged receipt of the petition presented by Mr. Brkovic Almonte, which was registered under number P-1275-04.

Subsequently, the IACHR received, in 2008, a new complaint in the case of Mr. Juan Luis Rivera Matus, presented by the same petitioners of the previous complaint, this time for the violation of articles 1.1, 8 and 25 of the American Convention, by the judgment dated July 30, 2007, delivered by the Supreme Court of Cassation Appeal, Role No. 3808-2006, in which it decided to apply the gradual prescription or half prescription in criminal matters of Article 103 of the Criminal Code, notwithstanding it being a crime against humanity.

In April 2010, the Commission decided to accumulate both petitions under number P-1275-04. However, by means of notes dated January 12 and February 6, 2015, the petitioners expressed to the IACHR their willingness to initiate a friendly settlement process only with regard to the lack of reparations of the relatives of Mr. Juan Luis Rivera Matus, which refers to the complaint filed on November 29, 2004. On this matter, on June 16, 2016, the State informed the IACHR that it had held informal conversations with the petitioners, in which they would have formulated a friendly settlement proposal referring only to the issue of reparation, expressing its willingness to continue examining its feasibility.

On July 25, 2016, the IACHR informed the parties that, after receiving their interest in moving forward in the search for a friendly settlement, exclusively in the aspect related to the judicial declaration of the prescription of civil action, in relation to the detention and extrajudicial execution of Mr. Juan Luis Rivera Matus, which refers to the complaint filed in 2004, it decided that this complaint be processed separately under petition number P-1275-04 A, while the processing of the complaint of the year 2008, referring to the gradual prescription or half prescription in criminal matters will be carried out under number P-1275-04 B. Then, on March 9, 2017, the IACHR transmitted to the State the basis for a friendly settlement proposal prepared by the petitioners, in relation to petition P-1275-04 A.

On November 11, 2019, a working meeting was held in Quito, Ecuador during the 174th Period of Sessions of the Inter-American Commission, in which Mrs. Gaby Rivera Matus and her

representative lawyers participated, and representing the State the Ministry of Foreign Affairs, and the Undersecretariat of Human Rights of the Ministry of Justice and Human Rights, where the State expressed its willingness to initiate the negotiations for an eventual adoption of a friendly settlement agreement. On December 6, 2019, the State proposed a formulation regarding the main terms in which the agreement would be drafted based on the petitioners' proposal, which was accepted, without reservations, by the petitioners on December 9, 2019.

THIRD: COMMITMENTS UNDERTAKEN BY THE STATE AND THE PETITIONERS

By this act, the petitioners and the State enter into a friendly settlement agreement, which terminates the dispute corresponding to the petition identified under number P-1275-04 A "Juan Luis Rivera Matus", filed by the petitioners before the Inter-American Commission on Human Rights on November 29, 2004. The terms governing this agreement are as follows:

- a) The State undertakes to pay Gaby Lucia Rivera Sánchez, Maria Angelica Rivera Sánchez, Juan Patricio Rivera Sánchez, Jovina del Carmen Rivera Sánchez, Olga Matilde Rivera Sánchez, Cecilia de las Mercedes Rivera Sánchez, and Juan Carlos Rivera Sánchez, the liquid sum of \$70,000,000 (seventy million Chilean pesos) to each of them.
- b) The State, through the Ministry of Justice and Human Rights, will make the payment within a period of six months after the date of signing this agreement.
- c) The petitioners irrevocably waive any complaint, claim, petition and/or judicial or administrative action that they have filed or that they may bring, before any national, regional, or international court or body, against the State of Chile, its organs, officials, or agents, for the facts referred to in petition P-1275-04 A before the Commission, or for the direct or indirect consequences that may emanate from said facts. In this context, the petitioners may not contest the sufficiency of the amount indicated in this agreement.

FOURTH: INTERNAL FOLLOW-UP MECHANISMS

In order to follow up on the commitments in this Agreement, the Parties agree to establish a "Monitoring Commission", which will be coordinated by the Human Rights Directorate of the Ministry of Foreign Affairs, with the technical advice and collaboration of the Secretariat for Rights Humans of the Ministry of Justice and Human Rights, in the preparation of progress and/or compliance reports to be submitted to the Inter-American Commission.

FIFTH: HOMOLOGATION

The State and the petitioners shall notify the Inter-American Commission, immediately after the conclusion of this Agreement, of the end of the dispute, requesting to prepare and publish the respective friendly settlement report, as provided in Article 49 of the American Convention and 40.5 of the Rules of Procedure of the IACHR; and that, in addition, takes the monitoring measures it deems appropriate, in accordance with Article 48 of the Rules of Procedure of the IACHR.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE.

13. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this procedure is intended 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 process expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the *Pacta Sunt Servanda* principle,

whereby States must comply in good faith with the obligations assumed in the treaties⁴. The IACHR also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows the closure of individual cases in a non-contentious manner, and has demonstrated, in cases related to various countries, to offer an important solution method, which can be used by both parties.

14. The Inter-American Commission has closely monitored the development of the friendly settlement achieved in this case and highly values the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement that is compatible with the object and purpose of the Convention.

15. The IACHR observes that, in accordance with the provisions of the fifth clause of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article 49 of the American Convention, once the friendly settlement agreement was signed. Therefore, it is appropriate to assess the content of the friendly settlement agreement.

16. In relation to subparagraph b of the third clause of the agreement (on economic reparation), the Commission observes that the State has a time frame of six months since the signing of the FSA to comply with the measure of economic reparation, for which considers that the compliance of this measure is pending and so declares it. The Commission awaits updated information from the parties regarding its execution after the publication of this report.

17. Furthermore, the Commission considers that the remaining content of the agreement is declarative in nature, so it would not be up to the IACHR to monitor its compliance.

18. Therefore, the Commission declares that the friendly settlement agreement has a partial level of execution, so it will continue to monitor the implementation of the pending parts of the friendly settlement agreement until its full compliance.

V. CONCLUSIONS

1. Based on the foregoing considerations and by virtue of the procedure provided for 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 for the achievement of a friendly settlement in the present case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

2. In accordance with the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on January 31, 2020.
2. To declare subparagraph b of the third clause (on economic compensation) pending compliance, according to the analysis contained in this report.
3. To continue with the supervision of the commitments assumed in subparagraph b of the third clause (on economic compensation) by the State of Chile. To that end, it reminds the parties of their commitment to periodically inform the IACHR about compliance with said measures.
4. To make this report public and include it in its Annual Report to the OAS General Assembly.

⁴ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: "**Pacta sunt servanda**". *Every treaty in force binds the parties and must be complied with by them in good faith.*

Approved by the Inter-American Commission on Human Rights on the 13day of the month of April 2020. (Signed): Joel Hernández García President, Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón, Members of the Commission.