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CASE 13.319

FRIENDLY SETTLEMENT

WILLAM FERNÁNDEZ BECERRA AND FAMILY
COLOMBIA

Electronically approved by the Commission on August 17, 2020.

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I. SUMMARY AND PROCEDURAL ASPECTS RELATED TO THE FRIENDLY SETTLEMENT PROCESS

1. On July 23, 2008, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition presented by Luis Guillermo Serrano Escobar (hereinafter “the petitioners” or “the petitioner party”) which claimed the international responsibility of the Republic of Colombia (hereinafter “the State” or “the Colombian State”) for the events that surrounded the death of William Fernández Becerra, 17 years old, who died in the early hours of the August 26, 1996 on the Pan-American highway that leads from the city of Popayán to that of Pasto, municipality of Mercaderes, as a result of six firearm impacts, allegedly carried out by agents of the Colombian National Police (CNP) who were involved in a “land anti-piracy” mission.

2. On January 27, 2017, the IACHR declared the petition admissible, through its Report No. 10/17, in which it concluded that it was competent to examine the alleged violation of the rights enshrined in Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

3. On July 16, 2019, the parties submitted a Memorandum of Understanding of initiation of the friendly settlement, which was materialized with the signing of a friendly settlement agreement (hereinafter “FSA” or “agreement”) on April 29, 2020. Likewise, as established in the fifth section of the FSA, the parties jointly requested the immediate approval of the friendly settlement agreement. Subsequently, on July 15, 2020, the parties signed an addendum to the friendly settlement agreement, which was forwarded to the Commission on July 22, 2020, reiterating the request for approval of the agreement.

4. In this friendly settlement report, as established in Article 49 of the Convention and Article 40.5 of the Rules of Procedure of the Commission, a review of the facts alleged by the petitioner is made and the friendly settlement agreement, signed on April 29, 2020 by the petitioner 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 decided.

II. FACTS ALLEGED

5. The petitioner alleged that William Fernández Becerra, 17 years old, died in the early hours of August 26, 1996 on the Pan-American highway that leads from the city of Popayán to that of Pasto, municipality of Mercaderes, as a result of six impacts of a firearm, allegedly carried out by agents of the Colombian National Police (CNP), who were carrying out a “land anti-piracy” mission.

6. According to the information provided by the petitioner, Mr. William Alfonso Fernández, father of the alleged victim, allegedly reported the crime of homicide on August 26, 1996, at the Office of the Prosecutor before the Criminal Judges of the Mercaderes Circuit. He pointed out that said complaint was forwarded to Judge No. 62 of Military Criminal Investigation who, on June 12, 1997, refrained from issuing an assurance measure against the five policemen involved and ordered that the proceeding be closed on the grounds that they acted in self-defense. Additionally, the petitioner pointed out that the Criminal and Military Judicial Prosecutor filed a writ for reconsideration, with an appeal in the alternative, questioning the absence of evidence to justify the self-defense. Additionally, the petitioner noted that on November 12, 1997, the Superior Military Court reversed the determination of the 62nd Court of Military Criminal Investigation,

establishing that “the investigation must continue its course with a view to ensuring that the modal circumstances in which the bloodshed took place”. Due to the foregoing, the petitioner stated that the military justice did not comply with the standards of competence, independence and impartiality and that the next of kin could not appeal the decision of the 62nd Court to close the proceeding, since they were not a party to it because they lacked economic resources to pay a lawyer.

7. Additionally, the petitioner alleged that on September 23, 1997, the next of kin filed an action for direct reparation against the CNP before the Administrative Court of Cauca, which was denied on November 16, 1999. This resolution was appealed and on January 24, 2000, the Council of State received the case and reversed the first instance judgment on February 18, 2010, ordering the State to pay compensation for damages. On these grounds, the petitioner alleged that there was an excessive delay in the administrative litigation proceeding.

III. FRIENDLY SETTLEMENT

8. On April 29, 2020, the parties executed a Friendly Settlement Agreement, with its text reading as follows:

FRIENDLY SETTLEMENT AGREEMENT CASE 13.319 WILLAN FERNANDEZ BECERRA AND FAMILY

On April 29, 2020, in the city of Bogotá D.C., Ana María Ordoñez Puentes, Director of International Legal Defense of the National Agency of Legal Defense, acting in name and on behalf of the Colombian State and who will be hereinafter referred as “Colombia State”, and Luis Guillermo Serrano Escobar, who acts as the petitioner in this case and will be hereinafter referred to as “the petitioner”, adopt the instant Friendly Settlement Agreement in the case No. 13.319 William Fernández Becerra being considered by the Inter-American Commission on Human Rights.

BACKGROUND

1. Pursuant to the Judgment issued by the Third Section of the Council of State on February 18, 2010, the facts of the case refer to the actions of the members of the police patrol that on August 26, 1996 killed Mr. William Fernández Becerra, through shots fired with their official firearms, used in the act of service, in the vicinity of the village of El Cardo, a district of the municipality of Mercaderes (Cauca). Additionally, in accordance with the alleged facts, the Military Criminal Justice, the jurisdiction that investigated the facts, did not comply with the standards of competence, independence and impartiality.
2. Through its Report on Admissibility No. 10 of 2017, the Inter-American Commission on Human Rights declared the petition admissible for possible violations of the rights recognized in articles 4 (life), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights (ACHR) to the detriment of William Fernández Becerra, as well as articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the ACHR to the detriment of his relatives, in accordance with articles 1.1 and 2 of the same instrument.
3. On July 11, 2019, the Colombian State and the representatives of the victims signed a Memorandum of Understanding in order to reach a friendly settlement.
4. In the following months, joint meetings were held to analyze the proposals of both parties in order to develop this friendly settlement agreement, in the following terms:

FIRST: ACKNOWLEDGEMENT OF RESPONSIBILITY

The Colombian State recognizes its international responsibility for the violation of the right to life (Art.4), the right to fair trial (Art. 8), the rights of the child (Art. 19) and the right to judicial protection of the American Convention. on Human Rights to the detriment of William Fernández Becerra, as well as the rights to humane treatment (Art. 5), the right to fair trial (Art. 8) and the right to judicial protection (Art. 25) of the ACHR to the detriment of his relatives, in accordance with article 1.1 of the same treaty.

SECOND: SATISFACTION MEASURES

The State of Colombia undertakes to carry out the following measures:

- Act of Acknowledgment of Responsibility.

An act of acknowledgment of private responsibility, which will be led by the Commander of the Metropolitan Police of Popayán. 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, the responsibility of the State will be acknowledged in the terms established in this agreement. The logistical and technical aspects of this measure will be in charge of the Ministry of National Defense, National Police.

- Publication of the facts

The Colombian State agrees to publish the report of 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 websites of the Ministry of National Defense and the National Agency of Legal Defense of the State.

THIRD: HEALTH MEASURES

The Colombian State, through the Ministry of Health and Social Protection, will provide physical, mental and psychosocial care through the Program for Psychosocial Care and Comprehensive Care for Victims [PPCCCV] and the General System of Social Security in Health [GSSSH], for which purpose each entity in the health sector will comply with its constitutional, legal and regulatory functions, so that in a coordinated fashion, care is provided in accordance with the standards established in national and intentional jurisprudence, for which the following must be respected :

Psychosocial care component.

- a. **Traceability:** Pursuant to the database of the victims recognized in case 13,319 Inter-American Commission on Human Rights (IACHR), each of them will be contacted in order to verify their location and carry out their targeting, to later determine whether they are within the municipalities of operation of the program (Ministry Operators - Territorial entity), as well as verify their willingness to receive psychosocial care, within the framework of the Program for Psychosocial Care and Comprehensive Health for Victims (PPCCCV).
- b. **Diagnosis of psychosocial disorders:** After the recognized victims consent to receiving psychosocial care, the psychosocial care teams made up of professionals in psychology, social work, sociology and / or anthropology, with training and experience in psychosocial and community care of victims of the armed conflict or vulnerable populations, will carry out a diagnosis in which the psychosocial disorders will be identified and the coping resources will be determined, in accordance with the guidelines and framework document of the PPCCCV.

- c. **Care by modalities:** Once the care plans are determined, the modalities to be implemented by the psychosocial care teams (Ministry Operators - Territorial entity) will be established, which may be individual, family and / or community. The care will have 8 sessions, without thereby exhausting the possibilities of slower and deeper care.
- d. **Follow-up on the implementation of the measure:** Once the sessions are over, the psychosocial care teams, together with the victim or victims, will undertake their assessment to identify if they allowed the mitigation, overcoming and prevention of the impacts and disorders caused by the victimizing acts. In accordance with the results of the assessment and at the will of the victims, the need to schedule new sessions will be determined. According to the health situation of the victims, they shall be derived for their psychological and / or psychiatric care through the GSSSH, applying Law 1616 of 2013, which guarantees the full exercise of the right to mental health, under the perspective of rights, and Resolution 4886 of 2018, through which the National Policy on Mental health is adopted.

Comprehensive health care component.

- a. **Insurance Status:** The Ministry of Health and Social Protection will verify, through the Unique Enrollment Database (UADB), the status of enrollment of each of the victims recognized in Case 13.319 of the Inter-American Commission on Human Rights (IACHR). If the verification shows that any of the recognized victims is not enrolled, the Ministry will request the territorial entity of the place of residence, so that, within its functions and powers, proceeds with the priority enrollment of the victim in accordance with section 3.1.1. of this document.
- b. **Assessment of the health situation:** The Ministry of Health and Social Protection will request the Administrator Companies of Benefit Plans (ACBP), in which the victims are enrolled, to report on their current health situation. Whenever necessary, the victims liaisons of the ACBP will be involved, so that, within their functions and competence, they undertake follow-up with the Health Provider Institutions (HPI) in which the victim is enrolled, to verify that a plan for comprehensive health care with a psychosocial focus has been developed. The ACBPs must notify this Ministry of the results.
- c. **Management to overcome access barriers:** With the coordination and support of the psychosocial team, efforts will be made with the ACBPs for the timely care of recognized victims and guidance will be provided to beneficiaries on care routs and benefits plans.
- d. **Follow-up on the implementation of the Health Measures:** The ACBPs are committed to implementing these measures. Therefore, follow-up will be undertaken every six months to correct, if necessary, barriers and degrees of specialized care”.

FOURTH: COMPENSATION

The Ministry of National Defense confirmed that: It is proven that the actors suffered damages resulting from the violation of the right to an effective judicial remedy, and therefore the State will materialize a measure of satisfaction aimed at restoring the dignity of the family of the young WILLAM FERNANDEZ BECERRA. In this sense, a payment of 100 SMLMV will be made to each of the members of his closest family nucleus, that is, their parents, and of 50 SMLMV to each of his two (2) brothers.

FIFTH: APPROVAL AND MONITORING

The parties request the Inter-American Commission on Human Rights to approve this agreement and monitor its implementation.

Annex 1

The following direct family members of William Fernández Becerra are understood to be the beneficiaries of this Friendly Settlement Agreement:

Name	Relationship
Verónica Becerra	Mother
William Alfonso Fernández	Father
Marisol Fernández Becerra	Sister
Iván Fernández Becerra	Brother

ADDENDUM TO THE FRIENDLY SETTLEMENT AGREEMENT¹**SIXTH: JUSTICE CLAUSE**

The National Agency of Legal Defense of the State will request the Office of the Attorney General of the Nation to study the feasibility of filing a Review Action in the proceedings relating to the events that occurred on August 26, 1996, in the vicinity of the village of El Cardo, a district of the municipality of Mercaderes (Cauca), in which Mr. Willam Fernández Becerra lost his life.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this procedure aims to reach a "friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The consent to be involved in this procedure expresses the good faith of the State to fulfill the purposes and objectives of the Convention by virtue of the *pacta sunt servanda* principle, by which the States must perform in good faith the obligations undertaken in treaties². It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows to conclude individual cases in a non-contentious manner, and has shown, in cases related to different countries, to offer an important settlement vehicle, which can be used by both parties.

10. The Inter-American Commission has closely followed the development of the friendly settlement reached in the instant 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.

11. In accordance with the provisions of section 5 of the Friendly Settlement Agreement, the parties jointly requested the Commission to issue the report contemplated in Article 49 of the American Convention.

12. The IACHR notes that, given the information provided by the parties up to now and the request for approval of the FSA submitted by the parties to the Commission, it is appropriate to assess compliance with the commitments established in the friendly settlement agreement.

¹ On July 15, 2020, the parties executed an addenda to the Friendly Settlement Agreement, which was submitted to the Commission on July 22, 2020.

² 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.*

13. The Inter-American Commission values the first declaratory section, recognizing the international responsibility of the Colombian State for the violation of the rights enshrined in Articles 4 (life), 8 (fair trial), 19 (rights of the child) of the American Convention to the detriment of William Fernández Becerra, as well as for the violation of articles 5 (humane treatment) and 25 (judicial protection) of the Convention to the detriment of the family members of the victim.

14. Regarding section 2.1 (acknowledgment of responsibility) and 2.2 (publication of the facts), both related to measures of satisfaction, the IACHR declares that compliance is pending and that it will continue to monitor them until their full implementation.

15. Regarding section 3, relative to the components of psychosocial care and comprehensive health care, both components related to the health measures, the IACHR declares that compliance is pending and that it will continue to monitor them until their full implementation.

16. In relation to section 4, on compensation, the Commission notes that, according to the mechanism established in Law 288 of 1996, said measure must be complied with once the instant approval report has been issued, and therefore considers that compliance with the measure is pending, and so declares. The Commission awaits updated information from the parties on its implementation after the publication of this report.

17. Regarding section 5, on approval and monitoring of the FSA, the IACHR considers that they are declarative in nature.

18. The Commission notes that compliance is pending with regards to all sections of this friendly settlement agreement and requests that the parties inform it in a timely manner of the effective implementation of the agreement. The IACHR will closely follow the implementation of the obligations assumed in the agreement, applying the guidelines prescribed in Article 49 of the Convention.

V. CONCLUSION

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 with the achievement of a friendly settlement in the present case, founded on respect for human rights, and compatible with the object and purpose of the American Convention.

2. On the basis of the considerations and conclusions developed in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on April 29, 2020
2. To find, in light of the assessment included in this report, that compliance with sections 2 (Satisfaction), 3 (Health Measures) and 4 (Compensation) is pending.
3. To continue the supervision of sections 2, 3, and 4 of the friendly settlement agreement until their full compliance, in accordance with the assessment included in this report. To that end, to remind the parties of their commitment to periodically inform the Commission about their fulfillment.
4. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on August 17, 2020. (Signed): Joel Hernández García President; Flávia Piovesan; Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón and Edgar Stuardo Ralón Orellana, Members of the Commission.