

TECHNICAL INFORMATION SHEET
CASE 11.626 A FREDY ORESTE CAÑOLA VALENCIA
REPORT ON FRIENDLY SETTLEMENT AGREEMENT N° 81/20
ARCHIVE
(ECUADOR)

I. SUMMARY OF THE CASE

Victim (s): Fredy Oreste Cañola Valencia

Petitioner (s): Ecumenical Commission for Human Rights

State: Ecuador

Negotiation start date: June 11, 1999

Date FSA signed: June 11, 1999

Report on Friendly Settlement Agreement N° 81/20, published on June 1, 2020

Estimated length of the negotiation phase: 21 years

Rapporteurship involved: Persons Deprived of Liberty

Topics: Right to life / Forced disappearance / Arbitrary or illegal detention / Fair trial / Investigation and due diligence / Judicial protection / Security and violence / Torture, cruel, inhuman and/or degrading treatment / Political violence

Facts: The petitioner contended that on April 12, 1993, the alleged victim had been detained by the police for allegedly being involved in the killing of a police officer. Following the detention, he was reportedly taken to Viche and then to Esmeraldas, where two hours later his lifeless body was found in the city's cemetery with signs of torture and bullet holes. Additionally, the petitioner reported that, on May 1994, he filed a private criminal complaint and that a criminal trial was subsequently carried out before the Fourth Criminal Court of Quinindé and that the Judge had "dropped the criminal case." It also reported that he had filed a complaint about the dropping of the criminal case with the Human Rights Committee of Esmeraldas and that, the case was pending before the Superior Court of Esmeraldas.

Rights alleged: The petitioner alleged that the Republic of Ecuador violated Articles 4 (right to life), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in connection with Article 1.1 of the same instrument.

II. PROCEDURAL ACTIVITY

1. On June 11, 1999, the parties signed the friendly settlement agreement.
2. On June 1, 2020, the Commission approved the friendly settlement agreement by report No. 81/20.

III. ANALYSIS OF COMPLIANCE WITH THE COMMITMENTS IN THE FRIENDLY SETTLEMENT AGREEMENT

Agreement clause	State of compliance
CLAUSE 3. STATE'S RESPONSIBILITY AND ADMISSION OF THE FACTS	
<p>The State recognizes its responsibility for violating the human rights of Mr. Fredy Oreste Cañola Valencia, as recognized in Article 4 (Right to life), Article 7 (Right to personal liberty), Article 8 (Fair trial rights), Article 25 (Judicial protection) and in turn the general obligation set forth in Article 1.1 of the American Convention on Human Rights and other international instruments, with said violations being committed by agents of the State, and that these acts have not been disproven by the State and have triggered its responsibility vis-à-vis society. ³ With this background, the State acquiesces to the facts constituting Case No.11.626, which is being processed before the Inter-American Commission on Human Rights and undertakes to take the necessary reparation measures in order to redress the damages caused by these violations to the victim or, otherwise, his heirs.</p>	Declarative clause
CLAUSE 4. COMPENSATION	
<p>With this background information, through the General Legal Counsel of the State (Procurador General del Estado), as the only judicial representative of the State in accordance with Article 215 of the Political Constitution of the Republic of Ecuador, promulgated in Official Register No. 1, in effect since August 11, 1998, the State hands over to Mrs. Gladys Mariela Bularios Pazmiño, in representation of Mr. Fredy Fredy Oreste Cañola Valencia, deceased, as provided by Articles 1045 and 1052 of the Civil Code, compensatory indemnity in one payment, of fifteen thousand United States Dollars (USD 15,000) or its equivalent in national currency, calculated at the current rate of exchange at the time of the payment, charged to the General Budget of the State. [...]</p>	Total¹
CLAUSE 5. PUNISHMENT OF THOSE RESPONSIBLE	
<p>The State undertakes to prosecute both civilly and criminally and to seek administrative sanctions of the persons who, in performance of state duties or taking advantage of public authority, are presumed to have been involved in the alleged violation. The Office of the General Counsel of the State undertakes to urge the Attorney General of the State, the competent agencies of the Judiciary, and public or private agencies to provide legally supported information to make it possible to establish the responsibility of said persons. If it is found admissible, this prosecution will be conducted in keeping with the Constitution and the body of law of the State.</p>	Noncompliance²

¹ IACHR, Report No. . 81/20, Case 11.626 A. Friendly Settlement. Fredy Oreste Cañola Valencia. Ecuador. June 1, 2020. Available at: <http://www.oas.org/es/cidh/decisiones/2020/ecsa11626aes.pdf>

² See IACHR, Annual Report 2020, Chapter II, Section G. Friendly Settlements. Available at: <http://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap2-en.pdf>

CLAUSE 6. RIGHT OF REPETITION	
The State reserves the Right of Repetition pursuant to Article 22 of the Political Constitution of the Republic of Ecuador, against any persons who are responsible for the violation of human rights through a final, firm judgment issued by the courts of the country or when administrative responsibility has been determined, in accordance with Article 8 of the American Convention on Human Rights.	Declarative clause
CLAUSE 7. TAX EXEMPT PAYMENT AND DEFAULT IN COMPLIANCE	
The payment that the State shall make to the person who is the subject of this friendly settlement agreement, is not subject to currently existing taxes nor may it be decreed in the future with the exception of the capital circulation “tax of 1%.” In the event that the State defaults for more than three months, from the date of the signing of the agreement, it shall pay interest on the amount it owes that will be equivalent to the average interest rate paid by the three banks with the highest deposits in Ecuador, over the entire period of the default.	Declarative clause
CLAUSE 8. INFORMATION	
The State, through the Office of the General Counsel of the State, undertakes to inform the Inter-American Commission on Human rights on a quarterly basis about compliance with the obligations taken on by the State under this friendly settlement. In keeping with its consistent practice and the obligations imposed on it by the American Convention, the Inter-American Commission on Human Rights will supervise compliance of this agreement.	Declarative clause

IV. LEVEL OF COMPLIANCE OF THE CASE

3. The Commission assessed the request filed by the petitioners to archive the case, therefore considered that it was not appropriate to continue with the supervision of the agreement. Based on the foregoing, the Commission decided to cease supervision of the friendly settlement agreement and archive the case, noting on the record in the Annual Report that the measure of justice was not complied by the Ecuadorian State and that the level of compliance of the agreement is partial.

V. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Individual outcomes of the case

- The State paid financial compensation, as set forth under the agreement.