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## **REPORT No. 334/20**

### **CASE 12.972**

#### REPORT ON FRIENDLY SETTLEMENT

MARCELO RAMON AGUILERA AGUILAR  
HONDURAS

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

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**REPORT No. 334/20**  
**CASE 12.972**  
**FRIENDLY SETTLEMENT**  
**MARCELO RAMÓN AGUILERA AGUILAR**  
**HONDURAS**  
**NOVEMBER 19, 2020**

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

1. On August 16, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the IACHR”) received a petition presented by Marcelo Ramón Aguilar<sup>1</sup>, (hereinafter “the petitioner” or “the alleged victim”) in which the international responsibility of the State of Honduras (hereinafter “Honduras”, “State” or “Honduran State”) for alleged violations of rights enshrined in the American Convention on Human Rights (hereinafter “American Convention” or “Convention”), derived from the dismissal of the alleged victim, within the framework of the process of purging the personnel of the National Police, carried in 2001.

2. The petition alleges the alleged violation by the State of Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, because the alleged victim had been unjustifiably dismissed, based on Decree 58-2001, published in Gazette No. 29,504 of June 15, 2001 (hereinafter “decree 58-2001, and without his dismissal followed the legal procedure established for it. The petitioner also alleged that the Honduran State was responsible for the violation of the rights enshrined in Articles 4 (right to life), 10 (right to compensation), 11 (protection of honor and dignity), 17 (protection of the family), and 24 (equality before the law), of the American Convention, in accordance with the general obligation established in Articles 1.1 and 2 of said instrument.

3. On August 15, 2014, the IACHR issued Admissibility Report 76/14 on case 12.972 Marcelo Ramón Aguilar. In its report, the IACHR concluded that it was competent to examine the alleged violation of Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights, in connection 11.1 and 2 of said instrument. It also decided to declare inadmissible the allegations referring to the alleged violation of Articles 4 (right to life), 10 (right to compensation), 11 (protection of honor and dignity), 17 (protection of the family) and 24 (equality before the law) of the American Convention, in accordance with Articles 1.1 and 2 of said instrument.

4. On November 9, 2015, the parties began the negotiation process, which materialized with the signing of a friendly settlement agreement (hereinafter “ASA” or “Agreement”), on August 12, 2020. Subsequently, at the working meeting of September 2, 2020, facilitated by the Commission, the parties indicated full satisfaction of the commitments made in the agreement and requested the Commission to approve it and close the case.

5. In this friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission's Rules of Procedure, a review of the facts alleged by the petitioner is made and the friendly settlement agreement signed on August 12, 2020 by the petitioner and representatives of the Honduran 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.

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<sup>1</sup> This petition was also presented by Mr. Rigoberto Duarte Acosta; however, by means of a communication addressed to this Commission on June 26, 2012, Mr. Marcelo Ramón Aguilar Aguilar - petitioner and alleged victim - reported that from that moment he would assumed the representation of his own case by himself.

## II. THE FACTS ALLEGED

6. The petitioner alleged violation by the State of his rights to due process and judicial guarantees, contained in Articles 8 and 25 of the American Convention, since the alleged victim was dismissed unjustifiably based on Decree 58-2001, which authorized to the Secretary of State in the Security Office to withdraw classified personnel within the superior, executive and inspection scales of the preventive police, investigation and special police, as well as the personnel of non-commissioned officers, classes and agents. In addition, it states that, at that time, the Secretary of the Security Office, protected by the aforementioned decree, "publicly stated that [the police] were purged for being corrupt."

7. The petitioner indicated that, since October 16, 1995, he worked as technical assistant III of the Secretariat of Public Works, Transportation and Housing (hereinafter "SOPTRAVI" for its initials in Spanish), an institution that also depends on the Executive Branch. Subsequently, on July 14, 1999, he was appointed General Director of Special Investigation Services, reporting to the Secretary of State in the Security Office, a position from which he was dismissed on August 9, 2001, based on Decree 58 -2001, without following the procedure ordered by the Organic Law of the Judiciary in this regard, and without having been "heard and defeated in court."

8. On the other hand, the petitioner pointed out that, through judgments of March 13, 2003, the Supreme Court of Justice of Honduras declared Decree 58-2001<sup>2</sup> unconstitutional and unenforceable. However, despite the fact that Article 316 (2) of the Honduran Constitution stipulates that, when the law is declared unconstitutional, it will be of general effects and of immediate application, the Supreme Court ruled that the sentence would not have retroactive effects.

9. In relation to the exhaustion of domestic remedies, the petitioner indicated that, taking into consideration the judgment declaring Decree 58-2001 unconstitutional, a petition for ordinary nullity was filed before the Court of First Instance of the Administrative Litigation to annul the cancellation of his position, and in which his respective reinstatement was requested, as well as the payment of the wages not received and the repair of damages. Subsequently, as alleged by the petitioner, given the denial of the nullity claim, actions of appeal and cassation were filed, respectively, before the Court of Appeals for Administrative Litigation and the Supreme Court of Justice.

10. Regarding the respective judicial decisions issued, the petitioner indicated that the authorities "have illegally ruled negatively". Firstly, he pointed out that the courts denied the remedies because the judgement that determined the unconstitutionality of Decree 58-2001 was not applicable, since the Supreme Court of Justice had established that it would not be retroactive. With this, according to the petitioner, his right to due process under the American Convention was violated since "Article 316 of the [Honduran] Constitution is clearly violated, which establishes that the unconstitutionality of a law has general effects and must be of immediate execution ". On the other hand, he pointed out that despite the fact that in the judgments of all the instances it was recognized that the petitioner had already received the labor benefits; he had refused to receive them because the totality of his working seniority had not been recognized. Regarding this, the petitioner indicated that it had to be calculated from October 1995, when he began his work with SOPTRAVI, and not since he began his position as General Director of Special Investigation Services, in July 1999.

## III. FRIENDLY SETTLEMENT

11. On 12 August 2020, the parties signed a friendly settlement agreement. The text of the friendly settlement agreement provided to the IACHR is included below:

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<sup>2</sup> Regarding the judgements, he states that they were published by legislative decree 85-2003 of May 29, 2003, contained in Gazette Number 30166 of August 19, 2003.

**FRIENDLY SETTLEMENT AGREEMENT**  
**Case 12.972 – Marcelo Ramón Aguilera Aguilar**

**FRIENDLY SETTLEMENT AGREEMENT IN IACHR CASE 12,972** concerning **Marcelo Ramón Aguilera Aguilar**, signed, on the one hand, by the State of Honduras, duly represented by Dr. LIDIA ESTELA CARDONA PADILLA, in her capacity as Attorney General of the Republic, appointed by Legislative Decree No. 70-2018, published on July 27, 2018, duly authorized for this act by Executive Agreement No. 05-2019 dated November 4, 2019, which states that she is empowered to hold this act, with the express faculty to compromise; and on the other hand: Marcelo Ramón Aguilera Aguilar, who acts on his own behalf as beneficiary petitioner in this agreement; which is held with the knowledge and consent of the INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), in accordance with the provisions of Articles 48, numeral 1, subsection f) and 49 of the American Convention on Human Rights regarding a friendly settlement of the reference case.

**FIRST: BACKGROUND**

The Inter-American Commission on Human Rights (IACHR), in admissibility report 76/14 dated August 15, 2014, in its operative part: "DECIDES: 1.- To declare the present case admissible as regards the alleged violations of the rights established in Articles 8 and 25 of the American Convention, in connection with Articles 1.1 and 2 of said instrument, to the detriment of Mr. Marcelo Ramón Aguilera Aguilar 2.- To declare the present petition inadmissible as regards the alleged violations of Articles 4, 10, 11, 17 and 24 of the Convention. "

**SECOND: GENERAL**

As consequence of the will expressed by the parties to reach a friendly settlement in the case at hand, the State undertakes to comply with this agreement in accordance with the following parameters:

- a. The scope: It refers specifically to the legal consequences that for the petitioner caused the issuance of Decree 58-2001 published in the Official Gazette La Gaceta No. 29,504 of July 15, 2001, which was later declared unconstitutional by the Supreme Court of Justice of the Honduran State, by means of a judgment dated March 13, 2003 and published in the Official Gazette La Gaceta 30,166 dated August 19, 2003. Considering that, these legal consequences transcend to October 16, 1995 when the petitioner began his work in the Ministry of Public Works, Transportation and Housing (SOPTRAVI).
- b. The nature: Settle by amicable means as corresponds to the petitioner covered by this agreement, through compensation and without this implying any recognition by the State, neither of the facts nor of the right invoked in the framework of the process being processed before the Commission Inter-American Human Rights.
- c. The modality: Amicable settlement regulated by articles 48, numeral 1 subsection f) and 49 of the American Convention on Human Rights and article 40 of its Rules of Procedure.
- d. The determination of the beneficiaries: By express agreement between the parties, the beneficiary of this agreement is **Marcelo Ramón Aguilera Aguilar**.
- e. Financial reparation: The parties agreed to establish a compensation amount, which satisfies the claims of **Mr. Marcelo Ramón Aguilera Aguilar**.

### **THIRD: JURISDICTION OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM**

Honduras has been a State Party to the American Convention on Human Rights since August 9, 1977, and recognized the contentious jurisdiction of the Inter-American Court of Human Rights on September 9, 1981.

### **FOURTH: AGREEMENT BETWEEN THE PARTIES**

Within the framework of the friendly settlement process carried out between the petitioner and the State of Honduras, with the intervention of the IACHR, the parties have managed to reach a satisfactory agreement for the solution of this case.

To cover matters related to economic reparation, the State of Honduras undertakes to verify the payment in the manner proposed by the petitioners during the negotiation stage through the Secretary of State in the Office of Security, which will initiate the pertinent procedures as soon as this duly signed document is presented to you, and the corresponding payment procedures must be fully concluded, no later than August 31, 2020 in the terms agreed in this friendly settlement agreement.

This agreement will be managed under the responsibility of the corresponding entities or Secretaries of State; the Office of the Attorney General of the Republic will coordinate and follow up on the actions necessary to comply with this agreement.

For his part, the petitioner agrees to monitor the implementation stages of this agreement and to collaborate so that it can become effective.

### **FIFTH: PROCEDENCE OF THIS FRIENDLY SETTLEMENT AGREEMENT**

Throughout the process, the parties maintained a space for dialogue aimed at exploring the possibility of reaching a possible friendly settlement agreement within the framework of the provisions of Article 48 of the American Convention on Human Rights.

### **SIXTH: SATISFACTION OF THE PETITIONERS**

The petitioning party considers that compliance with the economic commitments assumed through this friendly settlement agreement implies full satisfaction of its claims in the Marcelo Ramón Aguilera Aguilar case (IACHR Case No. 12.972).

The State of Honduras and the petitioner recognize and accept the amount [XXX]<sup>3</sup> as the value to be compensated.

The amount in the form stated will be made in a single payment to the beneficiary of this agreement.

### **SEVENTH: FORM OF PAYMENT OF THE FINANCIAL REPARATION**

In accordance with the request made by the petitioner that the amount offered be made in a single payment; the State undertakes to make the aforementioned value effective, through the Secretary of State in the Security Office in a single payment no later than August 31, 2020 and includes in its entirety the agreed economic compensation and therefore with said payment, the State of Honduras is completely released from any compensation for the alleged facts and from any subsequent claim.

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<sup>3</sup> By virtue of the ninth clause of the friendly settlement agreement and because there is only one beneficiary of this agreement that would make the amount reserved by the parties identifiable, the Commission reserves this information.

For such purposes, the beneficiary must prove their identification to the Secretary of State in the Security Office through the respective document.

In the event that the petitioner has died on the signing date of this agreement, the next of kin must present the documentation that is legally incumbent upon, accrediting the corresponding Declaration of Heirs, so that the Secretary of Security may subsequently proceed to make the corresponding payment.

The amount provided includes in its entirety any damage that is alleged to have been caused to the petitioner and his next of kin and therefore with the payment of the reparation contained in this Agreement, the State of Honduras is released from any compensation for the facts as well as of any present or future claim that could derive from this agreement; It is also agreed that judicially or internationally, the responsibility of the State of Honduras for any compensation is extinguished.

#### **EIGHTH: COMPLIANCE SUPERVISION**

The State of Honduras will notify the IACHR of compliance with this agreement and send the corresponding information.

#### **NINTH: CONFIDENTIALITY**

The parties undertake to keep strict confidentiality of the amount corresponding to the financial compensation and of the petitioner's personal data.

#### **TENTH: CONFORMITY OF THE PARTIES**

The parties express their full agreement and satisfaction, irrevocably and immediately, with the agreements reached and reflected in this document, consequently, the petitioner waives any action that may arise from the labor relationship that united them (sic) with the Ministry of Works, Public Services, Transportation and Housing (SOPTRAVI) and the Secretary of Security as a public servant of these institutions.

In order to the consensus reached, the parties are obliged to present a joint or separate request to the IACHR in order to proceed with the approval and closure, by the IACHR and to finally adopt the report contemplated in Article 49 of the American Convention on Human Rights, at which time it will acquire full legal status.

#### **ELEVENTH: VALIDITY**

This agreement enters into force as of the day it is signed and will conclude at the time the agreed compensation payment is made.

For the purposes of law, it is signed in the city of Tegucigalpa, M.D.C., on twelve (12) days of the month of August of the year two thousand and twenty (2020).

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

12. 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 the States must comply in good faith with the obligations assumed in the treaties<sup>4</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.

13. The Inter-American Commission has followed the development of the friendly settlement reached in this case and highly values the efforts made by both parties during the negotiations to reach this friendly settlement that is compatible with the object and purpose of the Convention.

14. The Commission observes that the parties have agreed to a single reparation clause in this friendly settlement agreement related to the disbursement of financial compensation. In that sense, that would be the only enforcement measure derived from the agreed FSA. On September 2, 2020, the State reported on compliance with the clause, providing the payment vouchers that account for the disbursement of the agreed amount in favor of the beneficiary. Likewise, at the working meeting facilitated by the Commission on the same date, the parties informed the Commission of their agreement and satisfaction with compliance of the measure and requested the approval of the friendly settlement agreement by the Commission, as well the termination of its supervision and the closure of the case. Taking into consideration the information elements described above, the Commission considers that the sixth clause of the friendly settlement agreement has been fully complied with and so it declares so.

15. Otherwise, the Commission considers that the rest of the content of the agreement is declarative in nature, and therefore the IACHR would not be responsible for monitoring compliance.

16. Based on the foregoing, the IACHR declares that the friendly settlement agreement has been fully complied with.

## **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.

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 August 12, 2020.
2. Declare fully complied the friendly settlement agreement.
3. 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.

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<sup>4</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.*