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REPORT No. 39/21
PETITION 245-03
FRIENDLY SETTLEMENT REPORT

WALTER MAURO YÁÑEZ
ARGENTINA

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Argentina. March 19, 2021.

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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On April 2, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition presented by Pablo Gabriel Salinas Cavalotti, Alfredo Guevara and Diego Lavado on behalf of Mrs. Norma Del Carmen Yáñez (hereinafter “the petitioners”), which alleged the international responsibility of the Argentine Republic (hereinafter “State” or “Argentine State” or “Argentina”), for the violation of human rights enshrined in Articles 4 (right to life), 8 (fair trial) and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect the rights and guarantees included in the Convention) of the American Convention on Human Rights (hereinafter “the American Convention”, “ACHR” or the “Convention”), to the detriment of Walter Mauro Yáñez, (hereinafter “alleged victim”), who died on March 11, 2001, as a result of a gunshot wound, presumably fired by an Infantry Agent from the Mendoza Police Station, who, together with his father, appeared as owners of a pantry-type shop, which had been broken into by four young people, including the alleged victim.

2. On July 21, 2005, the parties began their pursuit of a friendly settlement. After several meetings held between the parties, the petitioners submitted to the State a proposal for monetary and non-monetary reparations, ratifying their interest in arriving at a Friendly Settlement Agreement (hereinafter “FSA” or “Agreement”).

3. On November 3, 2009, the parties signed a Friendly Settlement Act, through which the Argentine State recognized its international responsibility for the human rights violations committed to the detriment of Walter Mauro Yáñez.

4. In accordance with what was stated by the parties, on January 8, 2013, Decree No. 2265 was published, approving the Friendly Settlement Agreement of November 3, 2009 and its Ratification Minutes of July 16, 2012.

5. On the other hand, and in accordance with the provisions of the provincial Constitution, on September 21, 2005, Law No. 8813 was published, through which the Legislative Power ratified the aforementioned Decree.

6. On August 18, 2020, the State reported the signing of the Friendly Settlement Agreement between the petitioner and the national State, indicating that the agreed reparation measures had been fully complied with. Therefore, they requested the Commission to approve the FSA signed on July 29, 2020.

7. 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 July 29, 2020 by the petitioners and the Argentine 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.

II. THE FACTS ALLEGED

8. According to the petitioners' allegations, on Sunday, March 11, 2001, at around 6 a.m., in the *Cooperativa de Bermejo* neighborhood, in the Department of *Guaymallén*, four young men, including Walter Mauro Yáñez, allegedly tried to enter a pantry-type shop. Alerted by the neighbors, the owner of the business,

Mr. Rosendo Salvador Cabrillana and his son (Daniel Alejandro Cabrillana, Infantry Agent of the Mendoza Police Station) reportedly went to the place in the former's truck. The group of youngsters allegedly fled after recognizing the two men upon their arrival.

9. According to the defendant's version, the young men had allegedly opened fire on him and his father, ignoring the command "POLICE STOP", allegedly forcing him to draw and operate the regulation weapon in self-defense. As a result, young Walter Mauro David Yáñez, aged 20, would have been mortally wounded.

10. According to the version of those who accompanied the victim, the defendant had opened fire without giving the command of "POLICE STOP", and while they fled completely unarmed, the alleged victim was found still alive by the defendant and his father moments after the shooting, who, upon seeing him, allegedly put him in their truck to take him to the Central Hospital, where he allegedly died hours later. Later, Agent Cabrillana went to the police station to submit his weapon.

11. These events allegedly resulted in case No. 90.922 "Prosecutor v / Cabrillana Daniel A. p / Attempt of Aggravated Robbery followed by death", filed in the Seventh Investigating Court, of the First Judicial District of the Province of Mendoza. On April 11, 2001, the Investigating Judge ruled that there was insufficient evidence to proceed to trial and released the defendant from house arrest. Later, on April 18, the Office of Public Prosecutor alleged the nullity of the witness statements of those who had participated in the attempt of aggravated robbery, on account of their status as defendants in the proceedings of the case, as well as the ruling of insufficient evidence to proceed to trial, for having been based on the same statements.

12. On April 20, 2001, after the ruling of insufficient evidence to proceed to trial had been issued, the autopsy performed on the corpse of Walter Mauro Yáñez was added to the record, which allegedly determined that the cause of death was a "hypovolemic shock, internal hemorrhage and a gunshot wound from the back to front". According to the petitioners, on May 14, 2001, the Judge ruled on the motion for nullity, declaring null all the actions requested by the Office of the Public Prosecutor. Subsequently, on May 15, 2001, the Judge issued a new order of insufficient evidence to proceed to trial and release from house arrest.

13. On October 26, 2001, the Central Hospital was requested to send the alleged victim's medical record, which was attached to the file on February 1, 2002. As indicated by the petitioners, on November 21, 2001, they allegedly asked the Judge to issue an indictment against the accused. On November 26, 2001, the case against the defendant was dismissed, as the period of the extraordinary extension had expired, and the Judge understood the situation of doubt regarding the facts under investigation had not changed. The petitioners reported that they had allegedly appealed this dismissal and that this appeal had been rejected. Thus, they allegedly filed a new appeal, which also was allegedly rejected by the Judge.

14. Consequently, not having received a favorable response, the petitioners filed a writ of certiorari with the Supreme Court of Justice of the Province of Mendoza, which also rejected the petition filed by the petitioners.

III. FRIENDLY SETTLEMENT

15. On July 29, 2020, the parties signed a friendly settlement agreement. The text of the friendly settlement agreement sent to the IACHR is included below:

FRIENDLY SETTLEMENT AGREEMENT PETITION P-245-03

Walter Mauro Yáñez

In the Autonomous City of Buenos Aires, Argentine Republic, on July 29, 2020, the parties to Petition P. 245-03 "WALTER MAURO YAÑEZ vs. REPÚBLICA ARGENTINA" from the registry of the Inter-American Commission on Human Rights, represented in this act by Dr. Pablo SALINAS, for the petitioners, and Dr. Andrea POCHAK —Under-Secretary for Protection and International Liaison of Human Rights of the Nation—, Dr. Gabriela Laura KLETZEL — National Director of International Legal Affairs in Human Rights— of the National Secretariat

for Human Rights, and Dr. A. Javier SALGADO —Director of International Litigation in Human Rights of the Ministry of Foreign Relations, International Trade and Worship—, for the ARGENTINE STATE, in its capacity as a party to the American Convention on Human Rights, acting by express mandate of Article 99 paragraph 11 of the Argentine Constitution, agree to enter into this FRIENDLY SETTLEMENT AGREEMENT.

I. The friendly settlement process between the petitioners and the Government of the Province of Mendoza.

A. As was duly communicated to the Illustrious Inter-American Commission on Human Rights, the petitioners and the provincial authorities opened a space for dialogue to explore a friendly settlement on the matter.

B. In the framework of said dialogue, the Province of Mendoza and the petitioners reached a Friendly Settlement Agreement which was approved by Provincial Decree No. 2265, published on January 8, 2013 and later ratified by Law No. 8813 published on September 21, 2015, in accordance with the provisions of the Provincial Constitution.

C. The text of the Agreement is reproduced below.

“1) That in light of the time elapsed since the signing of the minutes at pages. 98/99, dated November 3, 2009; the parties meet in order to fully ratify it in accordance with the clauses set forth therein, with the exception that the clause under which OSEP coverage was requested is eliminated in conformity with the withdrawal of such request made at page. 118. To this end, the aforementioned provisions are transcribed:

- 1) Rescind point 4 of Minutes No. 1 of the friendly settlement efforts, dated February 19, 2008, added to page. 11 of administrative file N ° 4604-S-07- 00100.
- 2) Continue with the friendly settlement process, provided for in Article 41 (Sic) of the IACHR Rules of Procedure, in accordance with the communication sent on July 21, 2005 to the Ambassador Representative for Human Rights in the International Sphere of the Ministry of Foreign Affairs International Trade and Cult of the Nation, Dr. Horacio Méndez Carreras.
- 3) In accordance with the statement in the preceding point, the Government of the Province of Mendoza undertakes to make full reparation to the successors in title of Walter Mauro Yañez, with prior agreement of the Attorney General, as follows:
 - a) By the highest authorities of the Province of Mendoza making a public request for an apology to the next of kin of the victim;
 - b) Initiate the corresponding procedures to create a Human Rights Prosecution Unit at the Office of the Public Prosecutor, which would be in charge of conducting the preparatory criminal investigation of crimes committed by members of the Security and Prison Forces and Penitentiaries.
 - c) Permanently train members of the Security and Prison Forces on Human Rights.
 - d) Provide compensation in the amount of \$ 135.000 (one hundred and thirty-five thousand pesos) to Ms. Norma del Carmen Yañez for material and moral damages resulting from the violation of the right to fair trial and judicial protection during the investigation over the death of her son Walter Mauro Yañez.

- e) Pay Ms. Norma del Carmen Yañez the sum of \$ 40.000 (forty thousand pesos) for professional fees and legal costs and expenses.
- 4) The parties will keep the authorities of the Ministry of Foreign Relations, International Trade and Worship of the Nation permanently informed, so it may evaluate all the background information.
- 5) This agreement will be submitted to the approval of the Governor by decree and ratification by law issued by the Honorable Provincial Legislature.
- 6) Likewise, it is expressly stated that the parties agree that the compensation amounts previously established must be understood to be complemented with the interest accrued from the moment of publication of the Approval Decree in the Official Gazette of the Province of Mendoza.”

II. Friendly Settlement Agreement

A. The petitioner states that the reparation measures agreed to with the Government of the Province of Mendoza have been fully complied with and, consequently, it is appropriate to proceed to the signature of the definitive agreement between the petitioners and the Argentine State.

B. Likewise, the petitioner states that it definitively and irrevocably renounces to initiate any other claim of any nature against the Argentine State in relation to the present case.

III. Petition

A. The Government of the ARGENTINE REPUBLIC and the petitioner welcome the signing of this agreement and mutually value the goodwill shown during the negotiation process.

B. Based on this, the parties expressly request that the Inter-American Commission on Human Rights ratify this Friendly Settlement Agreement by adopting the Report provided for in Article 49 of the American Convention on Human Rights.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

16. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this procedure has the aim “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Agreeing to pursue this procedure expresses the good faith of the State as regards carrying out the purposes and objectives of the Convention in keeping with the principle of *pacta sunt servanda*, by which states should carry out their treaty obligations in good faith.¹ It also reiterates that the friendly settlement procedure provided for in the Convention makes it possible to conclude individual cases in a non-contentious manner, and in cases relating to several countries, has proven to offer an important vehicle for settlement that can be used by both parties.

17. The Inter-American Commission on Human Rights 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 Convention.

18. The IACHR observes that, in accordance with the provisions of section III of the friendly settlement agreement, the parties agreed to request the Commission to issue the report contemplated in Article

¹ 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.”

49 of the American Convention, once the friendly settlement agreement was signed. Therefore, it is necessary to assess the content of and compliance with the friendly settlement agreement.

19. In relation to subsection b) of the third section of the agreement concerning the creation of a Human Rights Prosecution Unit, which would be in charge of carrying out the preparatory criminal investigation of the crimes committed by members of the Security and Prison Forces, on May 27, 2020, the petitioners indicated that the State had proceeded with the creation of a Specialized Institutional Violence Prosecution Office, in compliance with this aspect of the agreement and expressed its satisfaction with its compliance. Considering this information, the Commission considers that subsection b) of the third section has been fully complied with and so it declares it so.

20. Regarding the rest of the agreement, it should be noted that the Commission does not have detailed information on how these measures were complied with, despite the fact that such information was requested from the parties both formally and informally. At the same time, it should be noted that taking into consideration the satisfaction of the parties in the friendly settlement agreement and their indication of total compliance with the agreed measures, the Commission proceeds with the approval of the agreement, considering that the commitments assumed in said agreement have been fully complied with and so it declares it so.

21. Therefore, the Commission considers that the commitments established in subsections I.C. 3 a, b, c, d and e are fully complied with and so it declares it so. On the other hand, the Commission considers that the rest of the content of the agreement is declarative in nature and therefore it is not susceptible of supervision. Finally, based on all information included here, the Commission decides to close the case.

V. CONCLUSIONS

1. Based on the foregoing considerations, and pursuant to the procedure set out in Articles 48(1) (f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction that a friendly settlement was reached in the instant case, based on respect for human rights and compatible with the object and purpose of the American Convention.

2. In light of 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 July 29, 2020.
2. To declare that section I. C.3, letters a), b), c), d) and e), of the friendly settlement agreement has been fully complied with, pursuant to the analysis included in this report.
3. To declare, that the friendly settlement agreement has been fully complied with, pursuant to the analysis included in this report.
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 March 19, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Edgar Stuardo Ralon Orellana and Joel Hernández García, Members of the Commission.