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CASE 13.776

FRIENDLY SETTLEMENT

**GERMAN EDUARDO GIRALDO AND FAMILY
COLOMBIA**

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GERMAN EDUARDO GIRALDO AGUDELO AND FAMILY
COLOMBIA
JANUARY 14, 2020

I. SUMMARY AND PROCEDURAL HIGHLIGHTS OF THE FRIENDLY SETTLEMENT PROCESS

1. On March 19, 2009, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition lodged by the firm Javier Leonidas Villegas Posada, through its director Sandra Villegas Arevalo (hereinafter “the petitioners”), alleging international responsibility of the Colombian State for the detention of German Eduardo Giraldo Agudelo (hereinafter “the alleged victim”), on January 25, 1991, by a group of armed men, in plainclothes, who were wearing arm bands representing police authorities, at his sister’s residence.

2. On April 24, 2019, the IACHR decided to declare the petition admissible as for the alleged violation of Article 3 (right to recognition of juridical personality), Article 4 (right to life), Article 5 (humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), Article 11 (right to privacy) and Article 25 (judicial protection) of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of German Eduardo Giraldo and his family.

3. On April 12, 2019, the parties signed a letter of understanding with a view toward undertaking the friendly settlement process, which led to the signing of a FSA on September 9, 2019. Lastly, on October 16, 2019, the parties jointly submitted to the Commission a written brief on progress in the implementation of the agreement and requested approval thereof.

4. Pursuant to Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, the instant friendly settlement report provides an outline of the facts alleged by the petitioners and, thereafter, a verbatim transcription of the friendly settlement agreement, entered into on September 9, 2019, between the petitioners and the representatives of the Colombia State. It concludes with the approval of the agreement executed between the parties and it is agreed to publish this report in the IACHR’s Annual Report to the General Assembly of the Organization of the American States.

II. ALLEGED FACTS

5. The petitioners alleged that on January 25, 1991, Mr. German Eduardo Giraldo Agudelo was “arrested” by a group of armed men, in plainclothes, who were wearing arm bands representing police agents, in his sister’s residence. The petitioners claimed that the alleged victim went missing for two days until his family members learned of his death, which allegedly occurred in the course of a confrontation between an armed group operating outside the law and the Colombian Armed Forces. The petitioners argued that the State has not investigated or punished those responsible, has not elucidated the facts or made reparation to the family members of the alleged victim who, furthermore, have been identified as family members of one of the kidnappers, thus adversely impacting the dignity and reputation of both the alleged victim and his family members.

6. The petitioners noted that the aforementioned armed group had arbitrarily entered the residence of the alleged victim’s sister searching for a person by the nickname of “El Gordo.” Mr. Giraldo’s sister reportedly told them that nobody by that nickname was in the house and that the only male present was her brother, after which they proceeded to take the alleged victim into custody and left the residence with him. The petitioners mentioned that, since his disappearance, Mr. Giraldo’s relatives began a search process in the police departments of Medellin for two days, and that finally on January 27, 1991, they took knowledge of his death, when it was announced in the media, that he had died during a confrontation in the context of the attempt to rescue journalist Diana Consuelo Turbay de Uribe. In that sense, Mr. Giraldo Agudelo had been publicly identified as a member of the group of the kidnappers, who participated in that crime.

7. The petitioners noted that the area where the confrontation took place was under the control of the State security forces, in a rural area of the municipality of Copacabana and, therefore, it was unusual that the alleged victim had been found there after he was kidnapped and accused of being a co-participant in the kidnapping of the journalist.

8. The petitioners said that once these events occurred, a journalist communicated by telephone with Mr. Giraldo Agudelo's mother to set up an interview with her and publish an article in the press about the death of the alleged victim. Nonetheless, a few days later it was reported that the article would not be published because the lead journalist had been threatened. The petitioners noted that, due to the fact that at that time only the journalist and the alleged victim's mother had knowledge of this interview, it could be assumed that the telephone lines were wiretapped, giving rise to a well-founded fear among the family members of the alleged victim. In light of this situation, Mr. Giraldo Agudelo's family members refrained from bringing the respective criminal actions.

9. The petitioners noted that the criminal proceeding for the death of the alleged victim was heard under the Military Criminal Jurisdiction, before the 93rd Military Criminal Investigative Judge, who dismissed several alleged irregularities, which had been reported during these proceedings. In this regard, the petitioners indicated that, under a ruling of January 31, 1992, the Judge acquitted the police agents, who participated, on the grounds that the crimes attributable to them occurred in performance of their appropriate duty. This ruling was upheld by the Superior Military Court on February 9, 1993.

10. As for the disciplinary proceedings, the Office of the Deputy Oversight Officer for the Judicial and Administrative Police (*Procuraduría Delegada de la Policía Judicial y Administrativa*) investigated the policemen who participated in the operation the day of these events and detected irregularities related to the death of the alleged victim. Nonetheless, in a ruling of January 14, 1992, this Office acquitted these officers of the National Police, based on a lack of certainty about the conduct listed in the formal charging document.

11. Furthermore, regarding the administrative claims, the petitioners noted that the family members of the alleged victim brought an action for direct reparation under the administrative jurisdiction, in a case before the Eighth Chamber of Decision of the Administrative Claims Court of Antioquia. According to the petitioners, on April 15, 1999, this court declared as the responsible party the Nation – Ministry of Defense – National Police – for damages to the wife, children and parents of Mr. Giraldo Agudelo, and ordered payment of non-pecuniary and pecuniary damages. This ruling was appealed by the respondent, and at a conciliation hearing of February 22, 2007, it was agreed that the Ministry of Defense, National Police would pay the family members of the alleged victim eighty percent of the compensation ordered by the trial court.

12. Then, on July 18, 2007, the Chamber of Administrative Claims Third Section of the Council of State [*Consejo de Estado*] failed to approve the conciliation agreement that had been reached and, consequently the plaintiff filed a motion for reconsideration, which was decided on December 13, 2007, upholding the decree of July 18, 2007.

III. FRIENDLY SETTLEMENT

13. On September 9, 2019, the parties held a working meeting in Bogota, Colombia, where they entered into a friendly settlement agreement, establishing the following terms:

FRIENDLY SETTLEMENT AGREEMENT PETITION No. 314-09 GERMAN EDUARDO GIRALDO AGUDELO AND FAMILY

On September 9, 2019, in the city of Bogotá D.C., Ana María Ordoñez Puentes, Director of the Office of International Legal Defense of the National Agency for Legal Defense of the State, who is acting on behalf and in representation of the Colombian State and who, hereinafter, shall be referred to as "Colombian State," and as the other party, the firm Javier Villegas Posada Lawyers, represented by its director, Sandra Villegas Arevalo, who is acting as the petitioner

in this case and, who shall be referred to hereinafter as “the petitioner,” execute the instant Friendly Settlement Agreement in petition No. 314-09 German Eduardo Giraldo and Family, processed before the Inter-American Commission on Human Rights.

PRELIMINARY CONSIDERATIONS

1. The facts of the petition are about an arbitrary detention and subsequent extrajudicial execution of Mr. Germán Eduardo Giraldo by civilians allegedly attached to the Special Armed Command of the National Police, which took place on January 25, 1991, in the municipality of Copacabana, Antioquia.
2. In a judgment of July 8, 2009, handed down by the Council of State, the Nation – Ministry of Defense- National Police, were found materially responsible for the damages inflicted as a consequence of the death of Mr. German Eduardo Giraldo Agudelo, and was sentenced to payment of non-pecuniary and pecuniary damages to the immediate family members.
3. In Report No. 46/19 of April 24, 2019, the Inter-American Commission on Human Rights declared the petition admissible as to Articles 3, 4, 5, 7, 8, 11, and 25 of the American Convention on Human Rights in connection with Articles 1.1 and 2 thereof.
4. On April 12, 2019, the Colombian State and the representatives of the victims entered into a Letter of Understanding to reach a friendly settlement.
5. Over the subsequent months, joint meetings were held to examine the proposals of both parties in order to develop the instant friendly settlement agreement, under the following terms:

FIRST: RECOGNITION OF RESPONSIBILITY

The Colombian State recognizes its international responsibility for the violation of the right to the protection of honor and dignity, as set forth in Article 11 of the American Convention on Human Rights, in connection with the general obligation provided for in Article 1.1 of the same instrument, in favor of Mr. German Eduardo Giraldo.

SECOND: MEASURES OF JUSTICE

- The State will carry on with its obligation to investigate, prosecute and punish those responsible for the crimes, in order to establish the actual motives behind the homicide of Mr. German Eduardo Giraldo.

THIRD: MEASURES OF SATISFACTION

The State undertakes to implement the following measures:

- Ceremony of Recognition of Responsibility.

The State undertakes to hold a ceremony of public apology in Comuna 2 of the city of Medellin, presided over by a senior National Government official. The family members and representatives of the victims will actively participate in the ceremony of recognition of responsibility. At this ceremony, the official will recognize State responsibility as provided for in the instant agreement. The logistical and technical aspects of this measure will be handled by the Office of the Mayor of Medellin.

- Granting of an Academic Scholarship

Through the National Ministry of Education and the ICETEX (Colombian Institute of Education Loans and Overseas Study), the State of Colombia pledges to grant economic aid to Daniel Camilo Giraldo Morales, the son of Mr. German Eduardo Giraldo, for the purpose of financing the university education that he is pursuing and pay out up to three (3) SMMLVs (Statutory Current Minimum Monthly Salaries) per semester, room and board. The beneficiary of the measure must make sure he remains at the Higher Education Institution, striving to maintain adequate academic performance. The economic aid will cover the cost of tuition of the remaining semesters of the academic program and an allowance for room and board each semester of up to three (3) SMMLVs.

FOURTH: MEASURES OF HEALTH

The Ministry of Health and Social Protection will implement measures of health rehabilitation consisting of medical, psychological and psychosocial care through the General Social Security Health System and through the Psychosocial and Comprehensive Health Services and Victim Care Program (PAPSIVI), providing, through the General Social Security Health System, adequate, timely and priority treatment (based on medical criteria) to the victims with whom the instant friendly settlement agreement is being entered into.

FIFTH: GUARANTEES OF NON-REPETITION

The Executive Office of Military Criminal Justice of the Ministry of National Defense undertakes to carry on with training on the subject of human rights, evidence collection, preservation and assessment for Judges, Prosecutors and Magistrates of the Military Criminal Jurisdiction.

It further undertakes to include the facts of the instant petition as a topic of study and analysis at one of the trainings, at which it will be guaranteed that the victims' representatives will attend.

SIXTH: MONETARY REPARATION

It has been proven that the moving party endured material damages as a consequence of violation of the rights to family, to the truth (and) to effective judicial remedy and, consequently, the State will implement a measure of satisfaction aimed at restoring the dignity, honor, good name and reputation of the Giraldo Agudelo family, and accordingly will make the payment of 100 SMLMVs to each one of the closest immediate family members of Mr. German Eduardo Giraldo, that is, his spouse and relatives up to one step of consanguinity (his children and parents), and 50 SMLMVs for each of his three (3) siblings. The aforementioned amounts are subject to the approval of the Office of the Public Prosecutor and the respective judicial oversight, in accordance with current domestic law.

SEVENTH. APPROVAL AND MONITORING

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

This agreement was endorsed by the state entities engaged in the execution of the measures of reparation.

Signed in triplicate, in the city of Bogotá D.C., on the ninth day of September, 2019.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

14. The IACHR reiterates that, pursuant to Articles 48.1.f and 49 of the American Convention, this process is aimed at “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Willingness to engage in this process is a sign of the State’s good faith to comply with the object and purpose of the Convention under the principle of *pacta sunt servanda*, whereby States must comply in good faith with the obligations undertaken in treaties.¹ It also reiterates that the friendly settlement process provided for in the Convention allows for the disposition of individual cases in a non-adversarial manner; it has proven to be an important vehicle for reaching solutions at the initiative of both parties and has been used in cases involving a number of different countries.

15. The Inter-American Commission has closely followed the development of the friendly settlement achieved in the instant case and greatly appreciates the efforts put forth by both parties during the negotiation to reach this settlement, which is consistent with the object and purpose of the American Convention.

16. The Commission notes that, in light of the information provided by the parties thus far, compliance with the commitments set forth in Friendly Settlement Agreement should be assessed.

17. The Inter-American Commission appreciates the first declarative clause, wherein the Colombian State recognizes its international responsibility for the violation of the rights to protection of honor and dignity set forth in Article 11 of the American Convention on Human Rights.

18. The parties submitted information to the Commission on October 16, 2019, in a joint report about the level of compliance with the Agreement noting that the commitment to hold a public ceremony of recognition of responsibility had been complied with. In this regard, the parties jointly indicated that prior to holding the event; the State and the victims’ representatives were in constant communication to achieve a consensus on every detail of the ceremony in order to reach the highest level of compliance and satisfaction. In this way, the parties worked out all aspects relating to the Public Apology Ceremony, including the date and place, among other elements thereof. Additionally, the parties noted that the event was widely covered by different communications media outlets.

19. Thus, on September 21, 2019, at 11 am, in the neighborhood of Santa Cruz of Comuna 2 of Medellin, the Pubic Ceremony of Recognition of Responsibility was formally called to order and came to a close at 1:30 pm. The ceremony was presided over by the Vice Minister for Promotion of Justice, who recognized the responsibility of the Colombian State in his remarks at this symbolic event. Additionally, the victims and their family members took part alongside the petitioner, officials of the Office of the Mayor of Medellin, the inhabitants and residents of the neighborhood of Santa Cruz, Comuna 2, and members of the National Police, the National Legal Defense Agency of the State, among other national and local entities.

20. The joint report of the parties also recounts that the ceremony was widely disseminated, not only by several local media outlets, but also on the social networks and on the web portal of the Ministry of Justice, as well as on several news programs. In view of the information provided by the parties, the Commission declares total compliance with this item of the Agreement.

21. As for the second clause, pertaining to measures of justice, under which the State undertook to carry on with its obligation to investigate, prosecute and punish those responsible for the crimes, in order to establish the true motives behind the homicide of the victim, the parties did not provide any information about progress in the implementation of this measure and, therefore, the Commission understands the measure to be pending compliance and hereby declares so.

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.*

22. Regarding the third clause, relating to the academic scholarship for Mr. German Giraldo's son, the parties jointly noted that the National Ministry of Education created a fund with the ICETEX, under Inter-Administrative agreement 1280 of 2017, under which government resources are earmarked to pay for the obligations emanating from friendly settlement agreements or court judgments, pertaining to the granting of financial aid. In this regard, the State reported that on October 18, 2019, a meeting would be held to discuss compliance with this measure, in which the beneficiary of the measure, the victims' representatives and the National Ministry of Education would participate. Based on the foregoing, the Commission considers this item of the agreement to be pending compliance.

23. Concerning the fourth clause, about the measures of health, the parties stated that in order to draw up a roadmap for implementation of the health measures, a meeting was held on October 7, 2019, in which the victims' representatives, the Ministry of Health and the National Legal Defense Agency of the State took part. At this meeting, it was agreed to hold another meeting in late October to make further progress on this item. Therefore, according to the information provided by the parties, the Commission assesses this item of the Agreement to be pending compliance.

24. With respect to guarantees of non-repetition, the petitioners stated that on October 21, 2019, a meeting was held between the victims' representatives, the Executive Officers of Military Criminal Justice, the Ministry of National Defense and the National Legal Defense Agency of the State, for the purpose of assessing compliance with the guarantee of non-repetition, consisting of training, which was to be carried out within the Military Criminal Justice system.

25. In this regard, the parties noted that the commitment reached at this coordination meeting included that the Executive Officers of Military Criminal Justice, in conjunction with the Office of Human Rights of the Ministry of National Defense, is to hold eleven training sessions for Military Criminal Investigatory Judges, Magistrates of the Military Superior Court and Judicial Investigators of the Military Criminal Justice system.

26. According to the parties, the trainings are to be held between January and November 2020, and should include general aspects of the Inter-American Human Rights System, as well as a case study of the case of German Eduardo Giraldo and evidence collection, preservation and assessment. Lastly, the parties agreed that the training schedule is to be issued the last week of November 2019, and will be drawn up by the Executive Officers of the Military Criminal Justice system.

27. Based on the foregoing, observing that the parties have already managed to give content to the form of execution of the measure, the Commission considers that it is in the process of being implemented. The Commission appreciates that the parties have jointly developed the criteria for measuring compliance, and awaits further information regarding progress in the implementation thereof.

28. Lastly, as for the sixth clause regarding monetary compensation, the Commission notes that, pursuant to the mechanism set forth in Law 288 of 1996, said measure must be complied with once this homologation report has been issued and, therefore, it considers the measure to be pending compliance and hereby declares so. The Commission awaits updated information from the parties on implementation thereof, subsequent to the publication of this report.

29. Based on the preceding reasons, the Commission considers the first clause to be declarative in nature and, therefore, it does not require the monitoring of the IACHR. Additionally, the Commission considers the second clause to be totally complied with and hereby declares so. The Commission further considers the third, fourth, fifth and sixth clauses to be pending compliance.

30. In light of the foregoing, the Commission declares the friendly settlement agreement to be partially implemented and, accordingly, it will continue to monitor implementation of the pending items until there is total compliance.

V. CONCLUSIONS

1. Based on the preceding considerations and pursuant to the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts put forth by the parties and its satisfaction for achieving a friendly settlement in the instant case based on respect for human rights, and in a manner consistent 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 TO:

1. Approve the terms of the agreement entered into by the parties on September 9, 2019.

2. Declare total compliance with clause 3 (ceremony of recognition of responsibility).

3. Carry on with the monitoring of clauses 2 (measures of justice), 3 (academic scholarship for the son of Mr. German Giraldo), 4 (measures of health), 5 (guarantees of non-repetition) and 6 (monetary reparation), of the friendly settlement until total compliance is achieved, based on the analysis set forth in this Report. For this purpose, remind the parties of their commitment to periodically apprise the IACHR about compliance therewith.

4. Publicize the instant report and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 14th day of January 2020. (Signed) Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, Vice-President; Antonia Urrejola, Second Vice-Presidente; Flávia Piovesan; Margarete May Macaulay; Julissa Mantilla Falcón and Edgar Stuardo Ralón Orellana, Members of the Commission.