

OAS/Ser.L/V/II
Doc.237
22 October 2023
Original: Spanish

REPORT No. 218/23

CASE 12.490

REPORT ON FRIENDLY SETTLEMENT

ASMETH YAMITH SALAZAR PALENCIA
COLOMBIA

Approved electronically by the Commission on October 22, 2023.

Cite as: IACHR, Report No. 218/23, Case 12.490. Friendly Settlement.
Asmeth Yamith Salazar Palencia. Colombia. October 22, 2023.



REPORT No. 218/23
CASE 12.490
FRIENDLY SETTLEMENT
ASMETH YAMITH SALAZAR PALENCIA
COLOMBIA¹
OCTOBER 22, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On May 7, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by the Collective Corporation of Lawyers "José Alvear Restrepo" (hereinafter "CAJAR" "the petitioners" "the petitioning party") alleging the international responsibility of the Republic of Colombia (hereinafter "State" or "Colombian State" or "Colombia"), for the violation of the human rights contemplated in Articles 8 (fair trial), 9 (freedom from ex post facto laws) and 25 (judicial protection), in relation to Article 1. 1 (obligation to respect rights) of the American Convention on Human Rights, (hereinafter "Convention", "American Convention" or "ACHR"), for the deprivation of access to an effective judicial remedy for the determination of the rights of Asmeth Yamith Salazar Palencia, in view of the last instance decisions adopted by the Constitutional Court and the Supreme Court of Justice of Colombia.

2. On February 22, 2005, the Commission issued Admissibility Report No. 4/05, in which it declared the petition admissible and its competence to hear the claim presented by the petitioner with regard to the alleged violation of the rights contained in Articles 8 (fair trial) and 25 (judicial protection) in accordance with Article 1.1 of the American Convention.

3. On September 28, 2020, the parties signed a memorandum of understanding for the search for a friendly settlement in which they agreed on a work schedule to advance in negotiations that materialized with the signing of a friendly settlement agreement (hereinafter "FSA" or "agreement") on November 11, 2021, in the city of Bogota, D.C. Subsequently, on September 7, 2023, the parties filed a joint report on the progress in the implementation of the FSA and requested the IACHR to approve it.

4. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, includes a summary of the facts alleged by the petitioners and a transcription of the friendly settlement agreement signed between the petitioners and the representatives of the Colombian State on November 11, 2021. Likewise, the agreement signed between the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

5. The petitioners indicated that on February 23, 2000, Mr. Asmeth Yamith Salazar Palencia was sentenced, in a ruling handed down by Criminal Circuit Court 28 of Bogotá, to twelve months in prison, a fine of \$20,000 Colombian pesos, and a prohibition on performing public functions, for having acted as an intermediary to conceal the capital gains of a former public servant convicted of illicit enrichment. On March 6, 2001, the Superior Court of the Bogotá Judicial District upheld this decision. Subsequently, Mr. Salazar Palencia lodged an extraordinary appeal for annulment [*recurso extraordinario de casación*] before the Superior Court of the Judicial District of Bogotá, which was admitted and remanded to the Criminal Chamber of the Supreme Court of Justice.

6. On December 5, 2002, the Criminal Chamber of the Supreme Court of Justice refused to admit the motion for annulment and voided the appeal lodged, pursuant to Law N° 553/2000 which stipulates that in order for the imposition of an offense to be eligible for annulment in common proceedings, it must be punishable with a prison sentence of more than eight years, a requirement that in the Court's opinion, had not

¹ In accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or decision on this case.

been met in this case. Moreover, the Supreme Court considered that the grounds for exception, such as the need to harmonize jurisprudence or the violation of judicial guarantees, had not been invoked.

7. In response, Mr. Salazar Palencia lodged a *tutela* action before the Civil Chamber of the Supreme Court demanding immediate protection of his basic rights to due process and access to administration of justice. On January 24, 2003, the Civil Chamber of the Supreme Court ruled against the request, indicating that it was not procedurally possible to lodge challenges or other types of remedies, given the absence of hierarchically superior courts. The Court also indicated that it was inappropriate to remand the matter to the Constitutional Court since the decision not to admit the *tutela* action could not be equated with the type of rejection on the merits capable of giving rise to a remedy before that final level.

8. On January 31, 2003, Mr. Salazar Palencia filed a right to petition before the then-President of the Constitutional Court, requesting that it rule on the matter. In response, on August 6, 2003, the Constitutional Court ruled to protect Mr. Salazar Palencia's right to access to justice and declared without merit and in contravention of the relevant legal and constitutional norms –including the declaration of non-enforceability of Decree N° 553/2000— the decision of the Civil Chamber of the Supreme Court of Justice to set aside the *tutela* remedy without remanding it to the Constitutional Court for a possible review. Consequently, the Constitutional Court overturned the ruling issued by the Civil Chamber and, in order to reinstate the rights affected, ordered that the proceedings be sent back to the Civil Chamber of the Supreme Court of Justice for a new ruling on the merits of the *tutela* remedy lodged by Mr. Salazar Palencia against the December 5, 2002, ruling issued by the Criminal Chamber of the Supreme Court of Justice. It further indicated that this ruling should respect the *erga omnes* effect of non-enforceability ruling C-252 of 2001 issued by the Constitutional Court.

9. The petitioners asserted that in response, and despite the Constitutional Court decision, on October 2, 2003, the Civil Chamber of the Supreme Court of Justice confirmed the original ruling issued on January 24, 2003. Subsequently, Mr. Salazar Palencia filed a right to petition before the Criminal Chamber of the Supreme Court of Justice requesting that it admit the appeal for annulment in light of the *tutela* judgment issued by the Constitutional Court. In a judicial writ dated November 14, 2003, the Criminal Chamber pointed out that the Constitutional Court judgment had issued it no orders and that in any case, the order indicated that the Civil Chamber should rule on the merits of the *tutela* remedy lodged.

10. The petitioners asserted that this situation led Mr. Salazar Palencia to file a contempt motion [*incidente de desacato*] before the Third Chamber of Review [*Sala de Revisión*] of the Constitutional Court in order to request full compliance with the Constitutional Court judgment protecting his rights. On February 3, 2004, the aforementioned Chamber of the Constitutional Court stated that, in accordance with the law and constitutional norms, the *tutela* action was valid for any public authority, and not only the administrative authorities, and therefore, the Supreme Court had violated the petitioners' right to administration of justice and to obtain effective judicial protection of their fundamental rights, when it disregarded the August 6, 2003 judgment. Based on these considerations, the Constitutional Court indicated that “the petitioners have the right to appeal to any judge (whether a single person or a deliberative body), including a corporation of equal hierarchy, to demand, through a *tutela* action, the protection of their fundamental rights.”

11. In February 2004, the Supreme Court of Justice reacted by issuing a public communiqué from the full chamber in which it “deems it necessary to warn of the dangers to the legal order if the Nation were to allow the Constitutional Court, in addition to its specific functions, to be the one to establish, in its own judgment and without limitations other than those determined by its members, sometimes with a precarious majority, other competencies than those entrusted to it, in order to act as an all-powerful, omnipotent entity able to overlap with and even substitute, the legitimate constitutional exercise...”.

12. Meanwhile, on February 3, 2004, Mr. Salazar Palencia filed an appeal before the Council of State, First Administrative Law Section, which was rejected on March 25, 2004 and the proceedings remanded to the Civil Chamber of the Supreme Court of Justice, by jurisdiction, according to the provisions of Decree N° 1382/2000. On April 22, 2004, the Civil Chamber of the Supreme Court reaffirmed the January 24, 2003

decision, thereby rejecting the *tutela* action and ordering the case set aside without remanding the file to the Constitutional Court for its review.

13. The petitioners claimed that the rulings of the Civil Chamber of the Supreme Court of Justice issued on January 24, 2003, October 2, 2003, and April 22, 2004, respectively, violated legal due process and the right to effective judicial protection by failing to comply with the directives issued by the Constitutional Court in a firm and final judgment. The petitioners further claimed that the principle of protection from ex post facto laws was violated by the failure to admit the appeal for annulment filed by Mr. Salazar Palencia against the ruling of the Criminal Chamber of the Supreme Court, based on the application of a norm that was not in effect: decree N°553/2000, declared non-enforceable [*inexequible*] by the Constitutional Court. Consequently, in their view the Colombian State has violated the rights to fair trial, equality before the law, protection from ex post facto laws, and effective judicial protection set forth in Articles 8(1), 9, and 25 of the American Convention, as well as the generic obligation to ensure respect for the rights protected by the Treaty enshrined in Article 1(1).

III. FRIENDLY SETTLEMENT

14. On November 11, 2021, in the city of Bogotá D.C., the parties entered into a friendly settlement agreement, the text of which provides the following:

FRIENDLY SETTLEMENT AGREEMENT CASE No. 12.490 ASMETH YAMITH SALAZAR PALENCIA

On November 11, 2021, in the city of Bogotá D.C., Ana María Ordóñez Puentes, Director of International Legal Defense of the National Agency for the Legal Defense of the State, acting for and on behalf of the Colombian State, hereinafter referred to as the "Colombian State", and on the other hand, attorney Rafael Barrios Mendivil and attorneys Jomary Ortegón Osorio and María Alejandra Escobar Cortázar, on behalf of the Collective Corporation of Lawyers "José Alvear Restrepo" (CAJAR), who act as representatives in this case, and who will hereinafter be referred to as "the petitioner", sign this Friendly Settlement Agreement in case No. 12.490 Asmeth Yamith Salazar Palencia, ongoing before the Inter-American Commission on Human Rights.

FIRST: CONCEPTS

The following definitions shall apply for the purposes of this Agreement:

IACHR or Inter-American Commission: Inter-American Commission on Human Rights.

Moral damage: Harmful effects of the facts of the case that are not of an economic or patrimonial nature, which are manifested through the pain, affliction, sadness, distress and anxiety of the victims.

State or Colombia: In accordance with Public International Law, it shall be understood that the signatory subject of the American Convention on Human Rights (hereinafter "American Convention" or "ACHR") is the Colombian State.

Satisfaction measures: Non-pecuniary measures intended to seek the recovery of victims from the harm that has been caused to them. Some examples of this type of measures are: public acknowledgement of the truth and acts to make amends.

Parties: the State of Colombia, the victim, as well as their representatives.

Acknowledgment of responsibility: Acceptance of the facts and human rights violations attributed to the State.

Comprehensive reparation: All those measures that objectively and symbolically restore the victim to the state prior to the commission of the damage.

Representatives of the victims: Attorney Rafael Barrios Mendivil and attorneys Jomary Ortegón Osorio and María Alejandra Escobar Cortázar, representing the Collective Corporation of Lawyers "José Alvear Restrepo" (CAJAR).

Friendly Settlement: Alternative dispute resolution mechanism, used for peaceful and consensual settlement before the Inter-American Commission.

Victim: Mr. Asmeth Yamith Salazar Palencia.

SECOND: BACKGROUND

A. Before the Inter-American Human Rights System

1. On May 7, 2004, the Inter-American Commission on Human Rights received a petition filed by the Collective Corporation of Lawyers "José Alvear Restrepo" alleging the international responsibility of the State due to the lack of access to an effective judicial remedy for the determination of the rights of Mr. Asmeth Yamith Salazar Palencia in view of the last instance decisions adopted by the Constitutional Court and the Colombian Supreme Court of Justice.

2. On January 14, 2003, Mr. Asmeth Yamith Salazar Palencia filed a protective action before the Civil Cassation Chamber of the Supreme Court of Justice against the decision of the Criminal Chamber of the same Court to reject the cassation suit he filed, in order to claim the immediate protection of his fundamental rights to due process and access to the administration of justice.

3. For its part, on January 24, 2003, the Civil Cassation Chamber rejected the amparo action and refused to send the casefile for review to the Constitutional Court. By order of February 27, 2003, the Constitutional Court sent an official letter to the Civil Cassation Chamber of the Supreme Court of Justice requesting the remission of the protective action filed by Mr. Asmeth Salazar, which was subsequently selected for review. Therefore, by means of judgment T-678 of August 6, 2003, the Constitutional Court ordered the Civil Cassation Chamber of the Supreme Court of Justice to adopt a judgment of merit with respect to the protective action filed by the plaintiff.

4. The Civil Cassation Chamber of the Supreme Court of Justice, by decision of October 2, 2003, decided to maintain the decision contained in the Order of January 24, 2003, for which reason, Mr. Asmeth Yamith Salazar Palencia filed before the Third Review Chamber of the Constitutional Court, the motion of contempt against the Civil Cassation Chamber of the Supreme Court of Justice.

5. The Constitutional Court, by order of February 3, 2004, ruled on several requests for protective action review in similar cases, including that of Mr. Asmeth Yamith Salazar Palencia, concluding that in said cases there was no decision on the merits regarding the alleged protection.

6. Based on the order of February 3, 2004, Mr. Salazar Palencia filed the amparo petition before the State Council, First Section of the Contentious-Administrative Chamber, which rejected the amparo action and ordered the proceedings to be sent to the Civil Cassation Chamber of the Supreme Court of Justice due to its jurisdiction. For its part, the Civil Cassation Chamber of the Supreme Court of Justice ruled on April 22, 2004, reiterating the decision of

January 24, 2003, which rejected the protective action and ordered it to be archived without forwarding it to the Constitutional Court.

7. With respect to the proceedings before the IACHR, in Report No. 4/05 of February 22, 2005, the Inter-American Commission on Human Rights considered that the petitioners' allegations concerning the alleged violation of the right to a fair trial and effective judicial protection could be characterized as a violation of the rights guaranteed in Articles 8 and 25, in accordance with Article 1.1 of the American Convention on Human Rights, for which reason it declared the case admissible.

8. On September 28, 2020, the Colombian State and the representatives of the victims signed a Memorandum of Understanding in order to reach a friendly settlement.

9. In the following months, joint meetings were held to analyze the proposals of both parties in order to build this friendly settlement agreement.

THIRD: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility for the violation of its duty to guarantee the rights to a fair trial (Article 8) and to judicial protection (Article 25) recognized in the American Convention on Human Rights, in relation to the general obligation established in Article 1.1 of the same instrument, in favor of Mr. Asmeth Salazar Palencia.

FOURTH: REPARATION MEASURES AGREED BETWEEN THE PARTIES

The State undertakes to carry out the following reparation measures consisting of measures of satisfaction, guarantees of non-repetition and compensation, in the terms indicated below:

1) Satisfaction Measures

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

1.1 Act of redress

A Public Act of Acknowledgment of Responsibility shall be held with the active participation of the victim and his representatives. In this act, the State's responsibility will be acknowledged in the terms established in this agreement. The measure will be in charge of the National Agency for the Legal Defense of the State.

1.2 Cycle of online training

Mr. Asmeth Yamith Salazar Palencia will conduct a pre-recorded videoconference of up to one hour's duration, addressed to judicial officers and other actors of the justice sector. This intervention will take place within the cycle of on-line training of Constitutional Law on protective action. The content will be agreed with the "Rodrigo Lara Bonilla" Law School and the Network of Trainers. This satisfaction measure will be in charge of the "Rodrigo Lara Bonilla" Law School.

1.3 Publication of the facts

The Colombian State undertakes to publish the report of Article 49 of the American Convention on Human Rights issued by the Inter-American Commission on Human Rights approving the friendly settlement agreement, on the website of the National Agency for the Legal Defense of the State for a period of one year, thus guaranteeing access to the friendly settlement report.

2) Justice Measures

The Civil Cassation Chamber of the Supreme Court of Justice will analyze and rule on the merits of the protective action filed by the plaintiff against the order of December 5, 2002, of the Criminal Cassation Chamber of the Supreme Court of Justice, as ordered by the Constitutional Court.

From the preliminary study conducted by the National Agency for the Legal Defense of the State, it is concluded that the execution of this clause does not generate liability for the Supreme Court of Justice, for the Magistrates of the time of the facts, nor for those who currently occupy those positions. This measure of justice will be in charge of the Civil Cassation Chamber of the Supreme Court of Justice.

3) Pecuniary Reparation

The State undertakes to apply Law 288 of 1996, once this friendly settlement agreement is approved through the issuance of the Report of Article 49 of the American Convention on Human Rights. The foregoing, with the purpose of repairing the immaterial and material damages that may be proven in favor of Mr. Asmeth Salazar Palencia, who has not been compensated through the Contentious Administrative Jurisdiction, discounting, if applicable, the amounts recognized for administrative reparations. For these purposes, the criteria and amounts recognized by the current jurisprudence of the State Council will be used.

FIFTH. HOMOLOGATION AND FOLLOW-UP²

The parties request the Inter-American Commission on Human Rights to homologate this agreement and its follow-up.

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

Signed in three copies, in the city of Bogotá D.C., on the eleventh (11th) day of the month of November 2021.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

15. The IACHR reiterates that in accordance with 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 to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith.³ It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

16. The Inter-American Commission on Human Rights has closely followed the development of the friendly settlement reached in the present case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

² The original FSA listed this clause as the sixth clause, but the Commission understands that this is a material error and adjusts the numbering according to the corresponding sequence to facilitate its supervision.

³ 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.*

17. Pursuant to the fifth clause of the agreement signed by the parties whereby they requested the Commission to approve the friendly settlement agreement contemplated in Article 49 of the American Convention, and taking into consideration the parties' request of September 7, 2023 to move forward in this way, it is appropriate at this time to assess compliance with the commitments established set forth herein.

18. The Inter-American Commission considers that the first (Concepts), second (Background before the Inter-American Human Rights System), third (Acknowledgement of Responsibility) and fifth (Homologation and Follow-up) clauses of the agreement are of a declarative nature, and therefore it is not appropriate to supervise their compliance. In this regard, the Commission values the third declaratory clause, in which the Colombian State acknowledges its international responsibility for the violation of the rights enshrined in Articles 8.1 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 of the same instrument, to the detriment of Mr. Asmeth Yamith Salazar Palencia due to the deprivation of access to an effective judicial remedy.

19. With regard to numeral 1.1, *act of redress*, of the fourth clause on measures of satisfaction, as jointly reported by the parties, it was held on May 17, 2023 at 3:00 p.m., within the framework of the "*Friendly Settlements in Colombia: A step closer to the victims*" at the Universidad Externado de Colombia. The parties reported the existence of a permanent and fluid communication between the State and the petitioners, with whom they agreed on each of the details for the implementation of the measure, such as the date, time, agenda and logistics required for the development of this event. In this regard, the parties reported that they held a meeting with the media to develop a joint dissemination strategy, and so that, they would have all the details of the act of acknowledgement beforehand. They also provided a simple copy of the invitations circulated in the media for the event in which Mr. Asmeth Yamith Salazar, Mr. Enrique Cortes, a friend of Mr. Salazar Palencia, and his representative, María Alejandra Escobar, participated, as well as the National Agency of Legal Defense of the State, the Commissioner and Rapporteur for Colombia, Joel Hernández García, and the Assistant Secretary for the Petitions and Cases System, Jorge H. Meza.

20. Similarly, the parties reported on the contents of the agenda agreed upon for the event, which included an opening, the national anthem of Colombia, words by Mrs. Maria Alejandra Escobar Cortázar and Mr. Enrique Cortés, an intervention by Mr. Asmeth Yamith Salazar Palencia, and for the closing of the event, a cultural intervention requested by the alleged victim, in which songs chosen by Mr. Asmeth Yamith Salazar were performed. The State's intervention was made by the ANDJE's Director of International Legal Defense, who asked for forgiveness from the victims and their families for what happened, and acknowledged the State's responsibility in the terms established in the friendly settlement agreement signed between the parties, indicating the following:

[...]

On behalf of the State of Colombia and as Director General of the National Agency for the Legal Defense of the State, it is an honor to join you today, not only to recognize the responsibility of the State in the unfortunate events that happened to Mr. Asmeth Salazar, but also to highlight the importance that, as a State, we must ensure that what happened to Mr. Asmeth Yamith Salazar never happens again.

The facts of this case refer to the lack of access to an effective judicial remedy for the determination of the rights of Mr. Asmeth Yamith Salazar Palencia, in view of contradictory decisions ultimately adopted by the Constitutional Court and the Supreme Court of Justice of Colombia. [...]

For the Colombian State, the right of access to the administration of justice is an indispensable prerequisite for the realization of fundamental rights, and is one of the pillars that support the model of the Social and Democratic Rule of Law. The right of access to the administration of justice means the concrete possibility that all persons, without distinction, must have to obtain the reestablishment of their rights through the means provided by the administration of justice, which must be, *inter alia*, timely and effective.

In Colombia, the administration of justice must ensure the vindication of the rights of the victims and the reestablishment of the positions affected by the act caused within a reasonable period of time, which is why in the present case Mr. Asmeth Yamith Salazar, whose rights to due process and to an effective judicial remedy were violated by the State, must be comprehensively redressed through various measures aimed at his redignification.

In view of the foregoing, on behalf of the Colombian State and as Director General of the National Agency for the Legal Defense of the State, I acknowledge international responsibility for the violation of the rights to a fair trial and to judicial protection, enshrined in Articles 8 and 25 of the American Convention on Human Rights, in relation to the general obligation established in Article 1.1 of the same instrument, in favor of Mr. Asmeth Yamith Salazar Palencia.

[...]

21. For his part, Commissioner Joel Hernández, IACHR Rapporteur for Colombia, stated the following:

[...]

It is very moving for me to have listened to his story, his long struggle, Dr. Salazar, of 30 years to be able to reach this moment, within which, it is necessary to emphasize, that 17 years were within the Inter-American system. It was not without its up and downs when it reached the system, and we also assume here our share of responsibility to be able to provide timely justice to all the victims who arrive at the system.

But I always like to look ahead, I like to see the bright side of the system, how much it contributes to the victims. But this is not done by the Commission alone, it is not the result of the Commission, it is above all the result of the willingness of the parties that reach a friendly settlement: that of the petitioner, victim and his representation, on the one hand, but the representation of the State on the other hand. It is up to the Commission to facilitate this dialogue between you, and we feel enormously satisfied when we reach this point. How important that this act of acknowledgement has taken place within the framework of this seminar that the Universidad Externado de Colombia has hosted, precisely on the subject of friendly settlements and which has the purpose of being, as the title of the seminar says, "one step closer to the victims". How important that this event takes place precisely after a panel that was promoted by Mr. Asmeth Yamith Salazar on restorative justice, that is part of this whole reparatory process, and I am sure that this story, Dr. Salazar, that you have shared with us today, this very intimate and personal part, is a fundamental element to achieve reparation and to close a long-standing wound.

I am left with two moments pronounced in this act: on the one hand, the honest and responsible act of acknowledgement and request for forgiveness pronounced by the director of the ANDJE, but how important the acceptance of this acknowledgement and request for forgiveness that you (Asmeth Yamith Salazar) have pronounced. Congratulations, we take note Dr. Maria Alejandra Escobar of your request for homologation of the agreement and we commit ourselves to accompany the fulfillment of the clauses until total compliance is achieved.

[...]

22. The act of acknowledgement was recorded on the YouTube web page of the National Agency for the Legal Defense of the State⁴. Based on the foregoing, and taking into consideration the elements of information described above, the Commission considers that paragraph 1.1 of fourth clause of the friendly settlement agreement, related to the act of redress, has been fully complied with and so declares it.

23. On the other hand, with regard to paragraph 1.2, *on-line training cycle*, of the fourth clause (measures of satisfaction), on October 31, 2022, the State held that there was permanent communication between the "Rodrigo Lara Bonilla" Judicial School, Mr. Asmeth Salazar, his representatives and the National Agency for the Legal Defense of the State to agree on each of the details for compliance with the measure. In this regard, the Rodrigo Lara Bonilla Judicial School provided a simple copy of the invitations circulated for Mr. Asmeth Yamith Salazar Palencia's lecture. The State also indicated that the cycle of on-line training in Constitutional Law of the "Rodrigo Lara Bonilla" Judicial School and the Network of Trainers was conducted in 2021, and had the following schedule: within the program "*Third Cycle of Training in Constitutional Law*" on June 8, 2021, a virtual conference entitled "Historical Evolution of the Constitutional Protective Action" was held by Dr. Fabián Salazar Cárdenas; followed by, two other virtual conferences were held, entitled "*Scope of the Protection of the Protective Action*" and "*Procedural Generalities of the Protective Action*" on June 9 and 16, 2021, respectively, which were in charge of Dr. Mario Martínez Alférez. Finally, on June 21, 2021, Mr. Asmeth Yamith Salazar gave a presentation on effective judicial protection. This was done through the YouTube platform of the "Rodrigo Lara Bonilla" Judicial School⁵. Similarly, on the same day, the virtual conference entitled "*Decisions and Discussions of Interest on the Protective Action in National Jurisprudence*" was held by Dr. César Humberto Carvajal Santoyo. Finally, the State noted that the cycle closed on June 25, 2021 with the virtual conference "*International Standards for the Protection of Fundamental Rights*" by Dr. Jorge Ricardo Palomares García. For its part, the petitioner, on July 24, 2023, confirmed what was reported by the State and indicated that compliance with this end of the agreement was carried out in accordance with Asmeth Salazar, who positively regarded its restorative value and its effective compliance. By virtue of the foregoing, the Commission considers that this point has been fully complied with and so declares it.

24. With regard to paragraph 2 of the fourth clause on measures of justice, on October 31, 2022, the State reported that on April 20, 2022, the Civil Cassation Chamber of the Supreme Court of Justice ruled on the protective action brought by Mr. Asmeth Yamith Salazar against the Criminal Cassation Chamber of the Supreme Court of Justice. In this regard, the State held that the decision analyzed whether the Criminal Cassation Chamber violated the prerogatives invoked by the victim with the order of December 5, 2002, which dismissed the cassation suit he filed against the second instance criminal judgment, thereby violating the principles of legality and favorability. The State held that, in response to this legal problem "(...) *The position of the Chamber [of Criminal Cassation] accused is not arbitrary, since it was based on an objective analysis of the decision. In other words, since the aforementioned decision is based on a respectable application of the legal text, it cannot be qualified as a violation of the fundamental rights of the plaintiff, a circumstance that leads to rule out its disregard by this exceptional means.*" From there, it was concluded that the Criminal Cassation Chamber resolved to deny the relief sought through the protective action. Subsequently, Mr. Asmeth Yamith Salazar challenged the above decision, and on May 18, 2023, the Labor Cassation Chamber of the Supreme Court of Justice confirmed the challenged decision. For its part, on July 24, 2023, the petitioner confirmed the information provided by the State and also held that although the first and second instance decisions adopted by the Supreme Court of Justice do not protect the rights of Mr. Salazar Palencia, it is considered that, in accordance with the agreement of the parties, the Supreme Court of Justice analyzed and ruled on the merits of the protective action filed by Mr. Asmeth Salazar against the order of December 5, 2002 of the Criminal Cassation Chamber of the Supreme Court of Justice. In view of the foregoing, taking into consideration the information provided by the parties, the Commission considers that this point has been fully complied with and so declares it.

25. With regard to paragraphs 1.3, *publication of the report Article 49*, (measures of satisfaction) and 3 (pecuniary reparation) of the fourth clause of the friendly settlement agreement, and by virtue of the requests of the parties to move forward with the approval of the agreement prior to its execution, the

⁴ See, ANDJE, YouTube, Acto de Reconocimiento - Asmeth Yamith Salazar Palencia: <https://www.youtube.com/watch?v=AZFsJfJE6RE>

⁵ See: https://www.youtube.com/watch?v=y8IqWMG4_CQ

Commission observes that said measures must be implemented after the publication of this report, for which reason it considers that they are pending compliance and so declares it. By virtue of the foregoing, the Commission would await updated information from the parties on their execution subsequent to the approval of this report.

26. Based on the foregoing, the Commission concludes that paragraphs 1.1 (act of redress), 1.2 (cycle of on-line training) and 2 (measures of justice) of the fourth clause have been fully complied with and so declares it. At the same time, the Commission considers that paragraph 1.3 (publication of the report Article 49) and 3 (pecuniary reparation) of the fourth clause of the friendly settlement agreement are pending compliance. Consequently, the Commission considers that the friendly settlement agreement has a partial level of implementation and so declares it. Finally, the Commission considers that the rest of the content of the friendly settlement agreement is of a declarative nature and therefore it does not fall under its supervision.

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement has been arrived at in the present case on the basis of respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on November 11, 2021.

2. To declare full compliance with paragraphs 1.1 (act of redress), 1.2 (on-line training cycle), as well as paragraph 2 (justice measures) of the fourth clause of the friendly settlement agreement, according to the analysis contained in this report.

3. To declare numeral 1.3 (publication of the report article 49) and 3 (pecuniary reparation) of the fourth clause of the friendly settlement agreement pending compliance, according to the analysis contained in this report.

4. To declare that the friendly settlement agreement has a partial substantial level of compliance, according to the analysis contained in this report.

5. To continue monitoring the commitments assumed in paragraphs 1.3 (publication of the report, Article 49) and 3 (pecuniary reparation) of the fourth clause, according to the analysis contained in this report. To this end, remind the parties of their commitment to report periodically to the IACHR on their compliance.

6. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 22nd day of the month of October, 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, Stuardo Ralón Orellana and José Luis Caballero Ochoa, Commissioners.