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| Institution:          | Inter-American Commission on Human Rights  |
| File Number(s):       | Report No. 32/02; Petition 11.715  |
| Session:              | Hundred and Fourteenth Regular Session (25 February – 15 March 2002)   |
| Title/Style of Cause: | Juan Manuel Contreras San Martin, Víctor Eduardo Osses Conejeros and Jose Alfredo Soto Ruz v. Chile  |
| Doc. Type:            | Decision   |
| Decided by:           | President: Juan E. Mendez;<br>First Vice-President: Marta Altolaguirre;<br>Commission members: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts.<br>Commissioner Jose Zalaquett Daher, a Chilean national, did not take part in the discussion or vote on the present case, in accordance with Article 17 (2) (a) of the IACHR's Rules of Procedure. |
| Dated:                | 12 March 2002  |
| Citation:             | Contreras San Martin v. Chile, Petition 11.715, Inter-Am. C.H.R., Report No. 32/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)   |
| Represented by:       | APPLICANT: the Center for Justice and International Law  |
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## I. SUMMARY

1. On 30 December, 1996, the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a communication from the Center for Justice and International Law (“CEJIL”), which alleged the international responsibility of the Republic of Chile (“the State” or “the Chilean State”) for violations against Juan Manuel Contreras San Martín, Víctor Eduardo Osses Conejeros, and José Alfredo Soto Ruz, who were deprived of their liberty for more than five years due to a miscarriage of justice and were then denied the compensation they claimed. The three persons were arrested for the homicide of a woman and allege that the police subjected them to physical mistreatment and psychological pressure until they extracted a confession from them. The petitioners allege that the State is responsible for violation of the following rights recognized in the American Convention on Human Rights (“the American Convention”): humane treatment (Article 5), personal liberty (Article 7), fair trial (Article 8); and right to compensation (Article 10).

2. The parties signed the document entitled "Friendly settlement proposal of the IACHR" on October 6, 1998. Based on that document the State proposed and fulfilled a series of concrete measures with the approval of the victims. In the instant report, adopted under Article 49 of the American Convention, the IACHR summarizes the alleged violations, outlines the agreement reached by the parties, and decides to publish the report.

## II. PROCESSING BY THE IACHR

3. On January 2, 1997 the Inter-American Commission transmitted the pertinent portions of the petition to the Chilean State and requested it to provide relevant information. After several extensions, the State replied on November 4, 1997. The State's reply was conveyed to the petitioners who submitted comments on August 2, 1998.

4. On June 22, 1998, the IACHR placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. On October 6, 1998, a meeting was held with the parties at the headquarters of the Inter-American Commission, at which the document "Friendly settlement proposal of the IACHR" signed. In said act, the Inter-American Commission set a period of 30 days for the parties to formalize an agreement to settle the matter.

5. On November 6, 1998, the Chilean State requested extensions to present its proposal. On November 18 of that year the IACHR granted an extension of 30 days. On March 3, 1999, a hearing was held on the matter at the headquarters of the Inter-American Commission. At the request of the State, another extension was granted on May 20, 1999, for 45 days. The petitioners sent a communication on October 6, 1999 to urge expediency in the processing of the matter. Finally, on October 27, 2000, the State sent the Commission a "definitive friendly settlement proposal".

6. On January 11, 2001, the petitioners presented their comments to the definitive proposal of the State. On January 26, 2001, the Chilean State conveyed to the IACHR additional information about the measures adopted to settle the matter, and on February 5, 2001 requested an extension in order to reply to the comments of the petitioners. On April 10, 2001, the State presented the information requested by the Inter-American Commission.

7. The IACHR wrote to both parties on April 19, 2001, in order to express its high regard for the efforts shown and to exhort them to finalize the friendly settlement of the matter. The petitioners set out the issues pending in a communication of July 25, 2001, which the State replied to on September 27 of that year. On October 1, 2001, the Inter-American Commission requested both parties to provide information, in due course, about the holding of the act of public reparation pending to settle the matter.

8. The communication of the State of January 16, 2002, provides an account of the act of reparation held on November 22, 2001, in the city of Talca, Chile, and encloses press articles and the speech given by Mr. Mario Merchak Aspe, Governor of the Region of Maule.

## III. FACTS

9. On June 25, 1989, officers of the Carabineros de Chile [the Chilean police] discovered the corpse of María Soledad Opazo Sepúlveda near La Calchona bridge, not far from the city of Talca. On July 6, 1989, the Police Investigations Service detained Víctor Eduardo Osses Conejeros, and, on July 8, 1989, Juan Manuel Contreras San Martín and José Alfredo Soto Ruz, in the course of the criminal proceeding instituted as a result of the homicide of Mrs. Opazo Sepúlveda. According to the petition, during their detention they were subjected to physical

mistreatment and psychological pressure until they confessed to the deed. However, the police did not bring them before a court and released them on July 10, 1989. They did not report the incidents out of fear of the police threats against them.

10. On January 19, 1990, the Investigations Police again detained Messrs. Contreras San Martín, Osses Conejeros, and Soto Ruz, even though the investigation had yielded no further information. As happened six months earlier, they were forced to admit their guilt in the police station without a defense attorney present. This time, however, they were taken before the court where, under similar pressure, they ratified their confession. On January 25, 1990, they appeared in court again, this time without any police officers present, and retracted their confession. In spite of the foregoing, the three were charged with aggravated homicide and were remanded in custody pending trial.

11. On March 28, 1994, the court delivered a judgment sentencing José Alfredo Soto Ruz and Juan Manuel Contreras San Martín to 10 years imprisonment for aggravated homicide, and Víctor Eduardo Osses Conejeros to five years imprisonment for the same crime. On March 30, 1994, the defense appealed to the Court of Appeals of Talca, which, in a judgment of January 19, 1995, acquitted and ordered the immediate release of the three convicted men.[FN1]

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[FN1] In that respect, the petitioners say:

In the decision in second instance, the Court of Appeals of Talca mentioned the absence of any evidence that might attest to the involvement of the petitioners in the instant case, finding their self-incriminating statements to be invalid because it believed that they were irregularly obtained by the police and the courts in first instance.

Communication of the petitioners of December 30, 1996, p. 5.

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12. On June 18, 1995, the defense filed a petition with the Supreme Court of Chile, in which it requested the court to find the conviction in first instance unreasonable and arbitrary, in order to obtain compensation for miscarriage of justice, in accordance with Article 19 of the Constitution of that country.[FN2] Despite a favorable brief from the government attorney, on June 27, 1996 the Supreme Court rejected the petition with the argument that the error was not unreasonable and that such compensation is only admissible when the innocence of the convicted persons is proven, not when no conviction is handed down for lack of evidence.

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[FN2] Section 7(i) of said constitutional provision provides:

Once the final verdict of dismissal or acquittal has been issued, any person who might have been subjected to a proceeding or convicted at any jurisdictional stage by a decision that the Supreme Court finds unreasonable or arbitrary, shall be entitled to compensation by the State for any physical and moral damages they might have suffered. The compensation shall be determined by the courts in a brief summary proceeding where the evidence shall be appraised in a just and equitable manner.

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#### IV. FRIENDLY SETTLEMENT

13. The proposal signed by the parties paved the way for reaching a friendly settlement agreement:

The State, recognizing the delicate social and financial situation of the claimants, worsened after undergoing a long criminal proceeding, could be prepared to explore the possibility of contributing economic resources aimed to improve that situation, through ongoing social programs or other programs that might be specially created, in order that the victims, their immediate family, and the community in which they evolve might benefit from such programs.

The State, recognizing the importance of the provision on compensation contained in the Convention, and further recognizing the importance of having in place effective legal mechanisms to exercise that right, could undertake to carry out the necessary studies to reform the existing norms in the domestic sphere.

The State would adopt both material and symbolic measures to restore the good name and dignity of the victims.

14. In its "definitive proposal", the State offered the following compensatory measures:

To award to Messrs. Juan Manuel Contreras San Martín, José Alfredo Soto Ruz and Víctor Eduardo Osses Conejeros, a discretionary annuity of three minimum wages each;

To provide to them free of charge adequate training in skills and trades in accordance with their expectations, aptitudes and possibilities, through the office of the National Training and Employment Service (SENCE in its Spanish initials) in the region where they live, in order to enable them to increase their financial incomes and enhance their quality of life;

To publicly provide reparation to the victims before their community by means by an act of the Regional Government duly disseminated by the mass media, designed to restore their reputation and honor that had been certainly damaged by the judicial decisions that once harmed them.

15. The State of Chile further said that by Supreme Decree N° 274 of January 31, 2000, discretionary annuities were awarded to the three alleged victims, who began to receive them from that date forward. The State mentioned that these were the highest amounts that could be awarded under the discretionary pensions system.

16. Subsequently, the State informed that it had managed to ensure that the 2000 Annual Fellowship Program of the Training and Employment Corporation of Sociedad de Fomento Fabril would finance the cost of the training courses for which Messrs. Contreras San Martín, Osses Conejeros, and Soto Ruz had opted. The three attended the electricity course held by Instituto de Estudios Contables y Tributarios Ltda. from October 27 to November 7, 2000.

17. The State reiterated its intention to provide reparation to the victims in an act "duly disseminated by the mass media" that would be held once the Inter-American Commission

approved the proposed friendly settlement measures. As regards legal reforms, the State mentioned that the prospective Constitutional Measures bill to be prepared by the Ministry of Justice would propose an amendment to the constitutional provision on compensation for miscarriage of justice. The State considered that the carrying out of such studies constitutes compliance with the terms contained in the "Friendly settlement proposal of the IACHR" signed by the parties.

18. The petitioners said in their communication of January 11, 2001 that the alleged victims were satisfied with the annuities awarded.[FN3] As to the symbolic reparation measures, they mentioned the need for the government to state its intention to pay for advertising space in the radio, print, and television media with the highest ratings in the region and the country. With respect to legal reforms, they were dissatisfied with the lack of any announcement from the State regarding the need for a review of the country's laws in order to ensure the effectiveness of the right to compensation for miscarriage of justice.

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[FN3] The petitioners respected the wishes of the alleged victims, who have expressed their satisfaction with the amount that was awarded to them. However, the petitioners consider that the amounts offered to the victims, of three minimum wages, "are altogether insufficient compared with the violations suffered by Messrs. Contreras, Soto, and Osses."

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19. Later, the Chilean State provided information on progress in compliance with the second point contained in the aforesaid agenda of theirs, and mentioned that the act of "public reparation of moral damages for the victims" would be held in the near future.[FN4] Based on the foregoing, it requested the IACHR to adopt the report on the friendly settlement of the matter.

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[FN4] The Chilean State said:

Toward the end of September last, the Office of the Governor of the Region of Maule contacted the regional office of the National Training and Employment Service (SENCE), and managed to ensure that the 2000 Annual Fellowship Program of the Training and Employment Corporation of Sociedad de Fomento Fabril would finance the cost of the training courses that Messrs. Contreras San Martín, Osses Conejeros, and Soto Ruz chose.

The three victims chose the electricity course offered by Instituto de Estudios Contables y Tributarios Ltda., an institution accredited by the SENCE. The course was taught from October 23 to November 7 last. The petitioners had a 100 percent attendance rate and showed a "great desire to advance themselves and respect for the teaching and administrative staff," as certified by the Executive Director of the aforesaid institute and shown in the document attached. They currently hold a steady job.

Communication of the State of January 26, 2001, p. 2.

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20. As to the above-mentioned comments of the petitioners, the Chilean State says that the discretionary annuity was awarded on January 31, 2000, and, therefore, the alleged victims have already been benefiting from said financial compensation for more than one year. The State adds

that “the nature of the discretionary annuity is that of a special measure adopted by law, whose effects last for the duration of the beneficiaries’ lifetimes,” and enables them “satisfactorily to cover the costs of their upkeep and those of their immediate family.”[FN5] The State also stresses the importance accorded to the act of reparation that the regional government will perform. Finally, the State considers that the studies undertaken at the Ministry of Justice to reform the norms in force on miscarriage of justice are in keeping with the spirit of the proposal signed before the Inter-American Commission on October 6, 1998.

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[FN5] Communication of the State of April 9, 2001, p. 2.

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21. In reply to a communication from the Inter-American Commission, the Chilean State drew attention to the acceptance of the friendly settlement proposal by the petitioners and put forward other additional considerations connected with the public act of reparation for Messrs. Contreras San Martín, Osses Conejeros, and Soto Ruz. With respect to the legal reform being studied at the Ministry of Justice, the State said that it seemed to it appropriate to establish a reasonable time for it to “report on the progress of the above-mentioned studies, whose commencement and progress are grounded in the desire to comply with the friendly settlement proposal put forward and accepted.”[FN6]

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[FN6] Communication of the Chilean State of September 27, 2001, p. 3.

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22. Finally, on January 16, 2002, the Chilean State reported that the public act of reparation had been held on November 22, 2001, presided over by Mr. Mario Merchak Aspe, Governor of the VII Region of Maule. The communiqué issued on that date mentioned that the Governor personally offered public apologies to Juan Manuel Contreras San Martín, Víctor Eduardo Osses Conejeros, and José Alfredo Soto Ruz as follows:

The conduct of each of you is beyond reproach, but, regrettably you were the victims of mishandling and errors that led to you to be unjustly detained and kept in prison for more than five years for a crime that you did not commit, and to be convicted in first instance as the perpetrators of the killing of Mrs. María Soledad Opazo, murdered in June 1989.

We want you from this day forth to begin a new life, to look ahead with optimism and get over the problems of the past, in order to tackle the struggles that will arise in the future.[FN7]

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[FN7] Gobierno pidió perdón a jóvenes de La Calchona [Government apologized to La Calchona men], communiqué of the Office of the Governor of the Region of Maule, November 22, 2001.

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23. José Alfredo Soto Ruz said on that occasion that the three of them were there “with heads held high, with dignity, enjoying the liberty which we should never have lost ...nobody can give

us back today the hugs and smiles that we lost.” Mr. Soto Ruz thanked his family and friends, and also the Government for having recognized the error of justice and for publicly restoring their honor in a “truly historic” act.

24. The information transmitted by the Chilean State with respect to the friendly conclusion of the instant matter was communicated on February 5, 2002 to the victims via their representatives, Roberto Celedón Fernández and CEJIL. A short time period was set in order to allow the IACHR to examine the matter at its 114th regular session, which expired with no observations.

## V. CONCLUSIONS

25. The Inter-American Commission has actively encouraged the friendly settlement procedure based on the specific characteristics of the instant case. This report summarizes the activities of the parties and outlines both their will to solve the case and the measures adopted to that end by the Chilean State.

26. The Inter-American Commission stresses that the mechanism provided for in Article 48(1)(f) of the American Convention enables the non-contentious conclusion of individual petitions, as has been demonstrated in cases involving different countries in the region.

27. As to the norms on compensation for miscarriage of justice, the IACHR will closely monitor the progress of the relevant studies and proposed laws in the framework of the provisions contained in Articles 2 and 10 of the American Convention.

28. Based on the above factual and legal considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the friendly settlement reached in this matter, through the will of both parties.
2. To request the State of Chile to provide information to the IACHR, within three months after the transmission of this report, about the progress of proposed laws and the legislative process in the area of compensation for miscarriage of justice.
3. To make public this report and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on this the 12th day of March, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice President; Robert K. Goldman, Julio Prado Vallejo and Clare K. Roberts, Commission members.