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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 19/03; Case 11.725
Session:	Hundred and Seventeenth Regular Session (17 February – 7 March 2003)
Title/Style of Cause:	Carmelo Soria Espinoza v. Chile
Doc. Type:	Decision
Decided by:	President: Marta Altolaguirre; Second Vice-President: Clare K. Roberts; Commissioners: Robert K. Goldman, Juan Mendez, Julio Prado Vallejo, Susana Villaran. In conformity with Article 17(2)(a) of the Rules of Procedure of the IACHR, Mr. Jose Zalaquett, the First Vice-Chairman of the Commission and a national of Chile, did not participate in the discussion or voting on this case.
Dated:	6 March 2003
Citation:	Soria Espinoza v. Chile, Case 11.725, Inter-Am. C.H.R., Report No. 19/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANT: Alfonso Insunza Bascunan
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## I. SUMMARY

1. On February 15, 1997, the Inter-American Commission on Human Rights (hereafter the Commission or the IACHR) received a petition accusing the State of Chile (hereafter the Chilean State or Chile) of violating the petitioners' right to justice for its failure to investigate the death of Carmelo Soria Espinoza. Following proceedings before the IACHR, on November 19, 1999, the Commission published report 133/99 in which it found that the State of Chile had violated Articles 1, 2, 8 and 25 of the American Convention on Human Rights (hereafter the American Convention), and made certain recommendations.

2. On January 21, 2003, the Commission received a commitment signed by the State to comply with the recommendations of the IACHR, as well as a statement on the part of the petitioners accepting that commitment. In this report, the Commission reproduces the contents of both documents, ratifies the terms of the agreement, and urges the State to comply with the recommendations formulated by the IACHR in its report 133/99.

## II. FACTS OF THE CASE

3. Mr. Carmelo Soria Espinoza, 54 years of age and of dual Spanish and Chilean nationality, was working as chief of the editorial and publications section of the Latin American Demographic Center (CELADE) in Chile. CELADE is an agency of the Economic Commission for Latin America and the Caribbean (ECLAC) and part of the United Nations (UN) system.

Accordingly, Mr. Soria had the status of international official. On July 14, 1976, as he was leaving work, he was kidnapped by security agents of the Dirección de Inteligencia Nacional (DINA) and subsequently murdered. His body and car were left in a stream. The Chilean courts determined that State agents participated in the crime and their identities were established. However, pursuant to Decree Law N° 2.191, known as the self-amnesty law, criminal prosecution was dismissed, allowing the crime committed by these agents to go unpunished.

### III. PROCEEDINGS BEFORE THE COMMISSION

4. On February 15, 1997, Carmen Soria González Vera, the victim's daughter, assisted by the attorney Alfonso Insunza Bascuñán, filed a petition with the Commission, dated January 31, 1997. The petitioners accuse the State of violating the right of access to justice in the case of Mr. Carmelo Soria Espinoza and they request that the Commission declare the Amnesty Law incompatible with the obligations of Chile under the American Convention. On February 24, 1997, the Commission transmitted the petition to the State, thereby initiating the corresponding proceedings in accordance with the rules of procedure of the IACHR.

5. Upon completion of proceedings, on May 5, 1999, the Commission adopted Report 79/99 on the present case, based on Article 50 of the American Convention. In that report, the Commission recommended that the State establish the responsibility of the persons identified as guilty of the murder of Carmelo Soria Espinoza by due process of law; that it comply with the provisions of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, in order for human rights violations committed against international officials entitled to international protection to be appropriately investigated and to effectively punish those responsible, or that otherwise the Chilean State must accept the authorization of universal jurisdiction for such purposes; that it repeal Decree Law N° 2.191 enacted in 1978 in order that human rights violations committed by the de facto military government may be investigated and punished; and that it make reparations to the victim's family for physical and non physical damages, including moral damages.

6. The report was transmitted to the Chilean State with the pertinent recommendations, giving the State two months from the date of transmission to report on its compliance. The Chilean State submitted its observations on September 29, 1999. On October 18, 1999, the Commission approved Report 110/99, pursuant to Article 51 of the Convention, and transmitted it to the State with a period of one month to present information on its compliance with the recommendations. On November 19, 1999, the Commission decided to publish the above-mentioned report.

7. On January 21, 2003, the Commission received a commitment signed by the State to comply with the recommendations of the IACHR, as well as a statement by the petitioners accepting that commitment.

### IV. COMMITMENTS SIGNED BY THE PARTIES

8. The commitment signed by the State reads as follows:

In order to comply with the recommendations established by the Inter-American Commission on Human Rights (IACHR) in its report 133/99, in the case of reference (case 11.725), the Government of Chile is pleased to submit the following proposal of compliance, prepared in accordance with the rules accepted before that body.

The proposal incorporates both material and symbolic aspects consistent with the spirit and the possibilities of the government to provide a satisfactory solution to the affected party.

## I. Background:

1. In its report 133/99, the IACHR concluded, after analyzing the judgment of May 24, 1996, by the Supreme Court of Justice of Chile, that agents of the State “violated, in the case of Carmelo Soria Espinoza, the right to personal liberty, the right to life, and the right to personal integrity enshrined in Article I of the American Declaration of the Rights and Duties of Man”. The Commission concluded that the judicial dismissal of criminal proceedings initiated concerning the detention and disappearance of Carmelo Soria Espinoza affected the petitioners' right to justice, and that consequently the Chilean State violated its international commitments enshrined in Articles 8 and 25, 1(1) and 2 of the American Convention.

The Commission added that Decree Law 2.191 is incompatible with the American Convention, ratified by Chile in 1990, and that consequently the judgment of the Supreme Court of Chile declaring the Amnesty Law constitutional and of mandatory application violated Articles 1(1) and 2 of the Convention,

The Commission further declared that the Chilean State has not complied with Article 2 of the American Convention, in that it has not adapted its domestic laws to the provisions of the Convention.

The Commission also considered that the State has failed to comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons as a result of having adopted the Amnesty Law and because its competent organs for the administration of justice failed to punish the crimes committed against Carmelo Soria Espinoza.

2. The IACHR recommended that the Chilean State take the following measures:

- To establish the responsibility of the persons identified as guilty of the murder of Carmelo Soria Espinoza by due process of law, in order for the parties responsible to be effectively punished and for the family of the victim to be effectively ensured the right to justice, enshrined in Articles 8 and 25 of the American Convention.

- To comply with the provisions of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, in order for human rights violations, committed against international officials entitled to international protection, such as the execution of Mr. Carmelo Soria Espinoza in his capacity as an officer of ECLAC, to be appropriately investigated and to effectively punish those responsible. Should the Chilean State consider itself unable to fulfill its obligation to punish those responsible, it must, consequently, accept the authorization of universal jurisdiction for such purposes.

- To adapt its domestic legislation to reflect the provisions contained in the American Convention on Human Rights in such a way that Decree Law No. 2.191 enacted in 1978 be repealed, in order that human rights violations committed by the de facto military government against Carmelo Soria Espinoza may be investigated and punished.
- To adopt the necessary measures for the victim's family members to receive adequate and timely compensation that includes full reparation for the human rights violations established herein, as well as payment of fair compensation for physical and non physical damages, including moral damages.

3. The family of Mr. Carmelo Soria Espinoza has declared its interest in concluding judicial proceedings initiated before the Chilean courts to pursue the extracontractual liability of the State.

II. Objectives and scope of the Chilean government's proposal for compliance with the recommendations:

The proposal that the Government of Chile submits to the Inter-American Commission on Human Rights is an agreement between the parties (government and petitioners), that has the following objectives:

- To put an end to international action, in particular the measures adopted by the Commission pursuant to the recommendations contained in Report 133/99.
- To lay the basis for terminating judicial proceedings to pursue the extracontractual liability of the State for the death of Carmelo Soria, in the case "Soria con Fisco" ("Soria vs the State Prosecutor") now before the Fourth Civil Court of Santiago under case N° C-2219-2000.
- To obviate further judicial action for State liability, whether in connection with action of its agents or for physical or non physical damages, including moral damages.

III. Elements of the compliance proposal:

a) The family of Mr. Carmelo Soria Espinoza (hereafter the petitioner) will terminate action before the Inter-American Commission on Human Rights and expressly declares that all the recommendations contained in the Commission's report 133/99 have been complied with.

b) The petitioner accepts the symbolic reparation measures offered by the State of Chile, consisting of:

- A public declaration by the Government of Chile recognizing the responsibility of the State, through the action of its agents, for the death of Mr. Carmelo Soria Espinoza.
- That same declaration offers to erect a monument of remembrance to Mr. Carmelo Soria Espinoza in a location designated by his family in Santiago.

c) The petitioner will desist from the suit for extracontractual liability of the State, in the case "Soria con Fisco" now before the Fourth Civil Court of Santiago under case N° C-2219-2000, declaring that it agrees to terminate judicial proceedings initiated, that the reparations agreed before the Inter-American Commission on Human Rights are all that will be demanded of the State and that, consequently, the family will not pursue further judicial action

for State liability, whether in connection with action of its agents or for physical or non physical damages, including moral damages. An authenticated copy of the judicial decision approving the withdrawal of action must be presented before the Commission by the petitioner, for purposes of demonstrating compliance with this agreement.

d) The State of Chile undertakes to pay a single lump sum of one million five hundred thousand United States dollars as compensation to the family of Mr. Carmelo Soria Espinoza, which payment will be made ex gratia through the offices of the Secretary General of the United Nations, by virtue of an agreement to be signed between the Government of Chile and the United Nations.

e) The Government of Chile declares that Mr. Carmelo Soria Espinoza had the status of an international official of the United Nations, assigned to the Economic Commission for Latin America, ECLAC, as a senior staff member, and that he therefore had the status of a senior international staff official.

f) The Government of Chile will present before the Courts of Justice of Chile an application to reopen criminal proceedings that were initiated to prosecute those who killed Mr. Carmelo Soria Espinoza.

The proposals presented by the Government of Chile to comply with the recommendations of the Inter-American Commission on Human Rights have the sole objective of putting an end to the dispute that currently exists between the Chilean State and the family of Mr. Carmelo Soria Espinoza, expressed in case 11.725.

9. The commitment signed by the petitioner, and addressed to the IACHR, declares:

We, Carmen Soria González Vera, assisted by the attorney Alfonso Insunza Bascuñan, respectfully declare before you:

We are aware of the proposal for compliance with the recommendations of Report 133/99 presented by the Government of Chile to the Commission, and we expressly understand it in all its parts, which read textually as follows:

a) The family of Mr. Carmelo Soria Espinoza (hereafter the petitioner) will terminate action before the Inter-American Commission on Human Rights and expressly declares that all the recommendations contained in the Commission's report 133/99 have been complied with.

b) The petitioner accepts the symbolic reparation measures offered by the State of Chile, consisting of:

- A public declaration by the Government of Chile recognizing the responsibility of the State, through the action of its agents, for the death of Mr. Carmelo Soria Espinoza.
- That same declaration offers to erect a monument of remembrance to Mr. Carmelo Soria Espinoza in a location designated by his family in Santiago.

c) The petitioner will desist from the suit for extracontractual liability of the State, in the case "Soria con Fisco" now before the Fourth Civil Court of Santiago under case N° C-2219-2000, declaring that it agrees to terminate judicial proceedings initiated and that the reparations agreed before the Inter-American Commission on Human Rights are all that will be demanded of

the State and that, consequently, the family will not pursue further judicial action for State liability, whether in connection with action of its agents or for physical or non physical damages, including moral damages. An authenticated copy of the judicial decision approving the withdrawal of action must be presented before the Commission by the petitioner, for purposes of demonstrating compliance with this agreement.

d) The State of Chile undertakes to pay a single lump sum of one million five hundred thousand United States dollars as compensation to the family of Mr. Carmelo Soria Espinoza, which payment shall be made ex gratia through the offices of the Secretary General of the United Nations, by virtue of an agreement to be signed between the Government of Chile and the United Nations.

e) The Government of Chile declares that Mr. Carmelo Soria Espinoza had the status of an international official of the United Nations, assigned to the Economic Commission for Latin America, ECLAC, as a senior staff member, and that he therefore had the status of a senior international staff official.

f) The Government of Chile will present before the Courts of Justice of Chile an application to reopen criminal proceedings that were initiated to prosecute those who killed Mr. Carmelo Soria Espinoza.

With respect to this proposal, we express our absolute conformity and acceptance, because it complies with the recommendations of the Commission's Report 133/99.

THEREFORE:

We request the Executive Secretary to accept in full the proposal of the Chilean government on compliance with Report 133/99.

## VI. CONCLUSIONS

10. The Inter-American Commission recognizes the willingness of the Chilean State to resolve this case by complying with the recommendations contained in Report 133/99, including payment of compensation for damages suffered, and prosecution and punishment of those responsible for the death of Carmelo Soria.

11. In accordance with its powers under the Convention and its Rules of Procedure, the Commission will continue to monitor compliance with the recommendations in that report.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To take note of the terms of the commitment assumed by the State of Chile and accepted by the petitioners in the present case.
2. To welcome the willingness shown by the government to comply with the recommendations of the IACHR.
3. To urge the State to take the measures necessary to comply with pending commitments.

4. To continue monitoring compliance with the agreement reached by the parties and the recommendations made by the Commission.

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

Given and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington D.C., on March 6, 2003. (Signed): Marta Altolaguirre, President; Clare Kamau Roberts, Second Vice-President; Robert K. Goldman, Juan Méndez, Julio Prado Vallejo and Susana Villarán, Commissioners