

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 31/03; Petition 12.195
Session: Hundred and Seventeenth Regular Session (17 February – 7 March 2003)
Title/Style of Cause: Mario Alberto Jara Onate, Julio Cesar Cid Deik, Marcelino Esteban Lopez Andrade, Jose Exequel Tobar Munoz, Fernando Villa Molina, Ciro Elías Rodriguez Uribe, Mario Eduardo Araya Marchant and Sergio Ivan Gonzalez Bustamante v. Chile

Doc. Type: Decision
Decided by: President: Marta Altolaguirre;
Second Vice-President: Clare K. Roberts;
Commissioners: Robert K. Goldman, Juan Méndez, Julio Prado Vallejo, Susana Villaran.
In conformity with Article 17(2)(a) of the Rules of Procedure of the IACHR, Mr. Jose Zalaquett, First Vice- President of the Commission and a national of Chile, did not participate in the discussion or voting on this case.

Dated: 7 March 2003
Citation: Jara Onate v. Chile, Petition 12.195, Inter-Am. C.H.R., Report No. 31/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)

Represented by: APPLICANTS: the Center for Justice and International Law and the Public Interest Clinic of the University of Diego Portales

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I. SUMMARY

1. On August 4, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission, “the Commission, or “IACHR”) received a petition lodged jointly by the Center for Justice and International Law (CEJIL) and the Public Interest Clinic of the University of Diego Portales (hereinafter “the petitioners”), against the Republic of Chile (hereinafter “the State” or “the State of Chile”), in which the petitioners allege that Messrs. Mario Alberto Jara Oñate, Julio Cesar Cid Deik, Marcelino Esteban López Andrade, José Exequel Tobar Muñoz, Fernando Villa Molina, Ciro Elías Rodríguez Uribe, Mario Eduardo Araya Marchant and Sergio Iván González Bustamante, all members of the Chilean Carabineros uniformed police,[FN2] were victims of an evaluation process conducted by the administration of the Chilean Carabineros, in violation of their basic rights.

[FN2] Carabineros de Chile is a police, technical and military institution created in 1927 that is part of the law enforcement and public security forces of Chile.

2. The petitioners alleged that the State was responsible for the violation of their rights to a fair trial, respect for their honor and dignity, protection of the family, equality before the law and judicial protection and that the State has an obligation to respect and guarantee human rights and the responsibility to incorporate into its domestic law the provisions contained in Articles 1(1), 2, 8, 11, 17, 24 and 25 of the American Convention. With respect to the admissibility of the complaint, the petitioners alleged the exhaustion of available domestic remedies for protecting the guarantees that were violated. For its part, the State denied that it has violated any of the provisions of the Convention and called on the Commission to reject the arguments of the petitioners.

3. After reviewing the positions of the parties, the Commission concludes that it is competent to consider the complaint lodged by the petitioners, which, in the light of Articles 46 and 47 of the American Convention, it deems admissible.

II. INITIAL PROCESSING BY THE COMMISSION

4. On August 4, 1999, the Commission received a petition filed by the Center for Justice and International Law and the Public Interest Clinic of the University of Diego Portales, in which the petitioners alleged that the State of Chile had violated the rights of Messrs. Mario Alberto Jara Oñate, Julio Cesar Cid Deik, Marcelino Esteban López Andrade, José Exequiel Tobar Muñoz, Fernando Villa Molina, Ciro Elías Rodríguez Uribe, Marío Eduardo Araya Marchant and Sergio Iván González Bustamante, enshrined in Articles 1(1), 2, 8, 11, 17, 24 and 25 of the American Convention.

5. On August 10, 1999, the Commission transmitted the pertinent parts of the complaint to the State of Chile and granted it a period of 90 days to submit information about the acts alleged and about the exhaustion of domestic remedies.

6. On November 16, 1999, the State of Chile requested an extension of the period allowed for the submission of its reply and the Commission granted it a 60-day extension.

7. On May 15, 2000, the Commission reiterated the request to the State of Chile for information, which it had previously made on August 10, 1999. On June 2, 2000, the Permanent Mission of Chile to the Organization of American States requested a further 90-day extension on the grounds that the competent authorities had not provided the information requested to enable it to respond to the petition. On June 7, 2000, the Commission notified the State of Chile that the maximum period allowed under Article 34(6) of the Regulations of the Commission in force at the time had elapsed.

8. The information was received from the State on June 27, 2000 and transmitted on July 11, 2000 to the petitioners, who were given a period of 30 days to submit their comments. On September 8, 2000, the IACHR informed the parties that it had granted a hearing during its 108th session. The hearing took place on October 10, 2000.

9. The comments of the petitioners were received on October 20, 2000 and transmitted to the State of Chile on October 26, 2000. The Commission granted the State a period of 30 days within which to submit its comments.

10. On January 29, 2001, the State submitted its comments, which were communicated to the petitioners on February 5, 2002 and a period of 30 days granted for them to submit their reply. On February 25, 2002, the petitioners requested a 60-day extension for the submission of the requested comments. On March 30, 2001, the Commission granted the petitioners a 30-day extension and communicated its decision to the State.

11. On May 16, 2001, the Commission received the comments of the petitioners. In its communication, the petitioners informed the Commission that they were prepared to reach a friendly settlement. This information was transmitted to the State on the same date and a period of one month granted for it to submit its comments. On June 18, 2001, the State of Chile requested an extension of the period allowed for the submission of its reply and on July 2, 2001 the Commission granted an extension of one month. On August 2, 2001, the State of Chile again requested and the Commission granted a further one-month extension for the submission of its comments. In their communication of August 27, 2001, the petitioners objected to the granting of that extension.

12. On September 24, 2001, the Commission reiterated to the State the request for information that had been made on May 16, 2001 and requested that the information be submitted as early as possible. On October 1, 2001, it received the reply of the Chilean State to the comments of the petitioners. The reply was transmitted to the petitioners on the same date and a period of one month granted for them to submit their comments. On November 1, the petitioners' reply was received and transmitted to the State on November 21, 2001.

13. On January 17, 2002, the Commission received the State's response to the petitioners' comments, in which the State expressed its interest in having recourse to a mechanism for friendly settlement. On January 30, 2002, the Commission transmitted this communication to the petitioners.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

14. The petitioners allege that in May of each year all members of the Carabineros de Chile undergo an annual evaluation of their personal and professional performance records for the previous 12-month period. The evaluation is carried out by the Carabineros Police and Officer Review Board, in accordance with the provisions of Rule N° 8 on the selection and promotion of Carabineros personnel.

15. The petitioners alleged that they were informed in May 1998 of the results of the exercise, which varied between evaluations of "satisfactory" or "under observation". Disagreeing with these findings, they filed an appeal with the Board. In June 1998, they were notified of a

decision informing them that they had been placed on List N° 4 for dismissal, on the grounds that they had been re-evaluated in the area of loyalty.

16. According to the petitioners, both the original grading and the re-evaluation that were the grounds for the dismissal of the Carabineros are a direct consequence of the demonstration organized on April 27, 1998 by a group of Carabineros wives to protest the low pay of their husbands. The petitioners allege that the disciplinary action taken against them because of the demonstration by their respective spouses was taken into account during the evaluation exercise of May 1998. They claimed that the disciplinary proceeding had been instituted to investigate the alleged involvement of the Carabineros spouses of the women demonstrators in the planning of the demonstration. On June 2, 1998, the proceeding concluded with a penalty being imposed in first instance consisting in the dismissal of the Carabineros husbands of the women who had participated in the demonstration. The petitioners allege that this proceeding was the grounds used by the Evaluation and Review Boards for placing them on the list for dismissal and thus for expulsion from the institution.

17. On the question of admissibility, the petitioners allege that they have exhausted the remedies available within the institution of the Carabineros. They add that on July 14, 1998, they filed an application for protection in the Court of Appeals of Santiago, requesting that the Court find that their constitutional guarantees had been violated and order the Carabineros de Chile to conduct a fresh evaluation. On January 28, 1999, the Court of Appeals rejected the application on the grounds that it was not competent to examine the grounds upon which the Evaluation Boards based the decision that had resulted in the dismissal of the Carabineros, since the Boards were sovereign and if the Court were to review the grounds for the decision it would be setting itself up as another review body. On February 1, 1999, the petitioners appealed this decision to the Supreme Court of Chile, which upheld the ruling of the Court of Appeals.

18. The petitioners allege that under the terms of Article 24 of the Convention, the State of Chile is obliged to guarantee, without discrimination of any kind, all of the rights provided for in its domestic jurisdiction. The petitioners contend that the alleged victims have been subject to an arbitrary and discriminatory legal system, inasmuch as they had been punished for the acts of third persons, thereby creating a special statute of responsibility for Carabineros, which constitutes discrimination.

19. According to the petitioners, the State intervened in their family lives by seeking to determine the relations that should exist between them and their spouses, which constitutes a violation of Article 11 of the American Convention. They argue further that the State violated Article 17 of the Convention, firstly because it promoted inequality between the members of the families concerned and, secondly, because it deprived them of a home, of their income and of other economic benefits.

20. On the question of due process, the petitioners allege that this right was violated by the Chilean courts, which, in declining to review the violations alleged, had left them without legal protection and without any possibility for the arbitrary actions of the Evaluation Boards against them to be reviewed by a court. The petitioners questioned the evaluation process and argued that it should be based exclusively on Article 9 of Rule N° 8 on the selection and promotion of

Carabineros personnel, which provides as the criteria for evaluation “the quality of the personal and professional attributes of a subordinate official, taking into account the exigencies and requirements of the post”. The petitioners note that the conduct of the family members of the alleged victims was evaluated as a “personal quality”, in violation, they argue, of the provisions of the abovementioned Rule.

21. The petitioners further allege that the Evaluation Boards lacked independence and impartiality, since they are part of a militarized institution “governed by the values inherent in a body of this nature: hierarchy, discipline, obedience and loyalty are values that form the bases of such an institution and which cannot be undermined”. Concerning the lack of independence of these Boards, the petitioners allege that the Board’s decision is based not on its free opinion but on the opinion of the hierarchical superiors of Board members, on whom members depend for their promotion and advancement.

22. The petitioners also allege a violation of Article 25 of the Convention, insofar as there was no serious or consequential review by the Court of Appeals or by the Supreme Court of the penalties imposed by the institution of Carabineros de Chile. According to the petitioners, the Court of Appeals rejected the appeal on the grounds that it was not competent to review the grounds on which the Evaluation Boards based its decision, claiming that to do so would mean setting itself up as another review body. In referring to the Supreme Court’s decision, the petitioners noted that the Court limited itself to determining that “the scope of the concepts underlying the rules that govern the evaluations of Carabineros in Chile permits the police authorities to act as they deem appropriate”. The petitioners therefore argue that they lacked an effective remedy to protect their human rights that were violated.

23. In their reply to the State’s comments, the petitioners declared that “the victims suffered various violations of the rights enshrined in the Convention, as a consequence of a capricious and arbitrary proceeding that was not substantiated in conformity with the norms of due legal process and that the actions of the ordinary Courts of the Republic of Chile constituted a clear case of denial of justice or lack of judicial protection”. They add that the State of Chile imposed on the Carabineros the obligation to control the acts of their spouses, which they consider to be interference in their private lives, in which the authorities have no power to intervene in an arbitrary manner, and which, in turn, constitutes a violation of their moral integrity, of the integrity of their family and of their personal dignity.

24. The petitioners therefore argue that Articles 1(1), 2, 8, 11, 17, 24 and 25 of the Convention have been violated.

B. Position of the State

25. The State argued that account must be taken of the special legal status of any police organization, under which its members and their families are subjected to a treatment different from that accorded to an ordinary person, because of the organization’s responsibility to the society and to the State itself, and that this cannot be considered to be inequitable or as promoting inequality. It explained that this does not mean that the families of Carabineros are treated differently by the law. What it means is that “it imposes greater responsibility for their

actions and creates an indissoluble link between children and wives and the function of the policeman father”. The State denied that it had intervened in the family life of the petitioners. It added that, on the contrary, it was some of the spouses of the Carabineros who had interfered through the press and in public demonstrations in the relations between Carabineros de Chile as an institution and its personnel.

26. The State argued that the special nature of Carabineros de Chile “makes it necessary to situate the actions of the institution and those of its personnel in a conceptual and practical context that is different from that exists in the civilian world, being essentially the maintenance of strict internal discipline and respect for the hierarchical order, as a consequence of which its personnel must be governed at the administrative and disciplinary levels by the special statutes that regulate and codify their actions from the professional, personal and ethical perspectives.” The State maintains that the evaluation exercise for the Carabineros was consistent with the legal norms in force and that the legality and legitimacy of the exercise was confirmed by the decisions of the courts, which rejected the appeals filed by the affected parties. It adds further that, as stated in the decision of the Supreme Court of Chile, dated April 28, 1999, in dismissing the policemen, a number of criteria were taken into account, including knowledge, sense of responsibility, discipline, physical capacity, initiative and loyalty, as permitted by Article 22 of Act N° 18.691. The Supreme Court determined, moreover, that there was no evidence or ruling “that [the evaluation] was the result of arbitrariness or abuse, or that it was contrary to the constitutional or legal order.”

27. On the question of the violation of the right to legal safeguards and judicial protection, the State observed that, in its application for protection, the petitioners did not object to the evaluation exercise as such and to the criteria for evaluating police personnel, and that the court could not therefore review those aspects, since they were outside the scope of its competence. It added further that, in accordance with the norms in force, the evaluation of Carabineros is done by Evaluation Boards and not by the Court. To do otherwise would mean involving the judiciary in the process and transforming the judicial branch into another forum for evaluation. The State alleges that the petitioners did not exercise their right of recourse to other available legal remedies and merely filed an application for protection, which is an extraordinary remedy.

28. The State declared, lastly, that it had violated none of the provisions of the American Convention and that the articles invoked by the petitioners as having been violated had been fully respected. They therefore requested the Commission to reject the arguments of the petitioners.

IV. COMPETENCE AND ADMISSIBILITY

A. Competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* of the Commission

29. Under Article 44 of the American Convention, the petitioners are entitled to lodge complaints with the IACHR. The petition names as the alleged victims individuals in respect of whom Chile undertook to respect and guarantee the rights recognized in the American Convention. With regard to the State, the Commission notes that Chile has been a State party to

the American Convention since August 21, 1990, the date on which it deposited the corresponding instrument of ratification. The Commission is therefore competent *ratione personae* to consider the petition.

30. The Commission is competent *ratione loci* to consider the petition, insofar as it concerns rights protected by the American Convention that are alleged to have been violated within the territory of a State party to the Convention.

31. The IACHR is competent *ratione temporis* insofar as the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date on which the acts referred to in the petition are alleged to have occurred.

32. Lastly, the Commission is competent *ratione materiae*, because the petition denounces violations of human rights that are protected by the American Convention.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

33. Article 46(1) of the American Convention provides as a requirement for the admissibility of a complaint the prior exhaustion of remedies available under the domestic laws of the State.

34. The State did not present any preliminary objections related to the failure to exhaust domestic remedies. The Inter-American Commission is therefore of the view that the State of Chile did not invoke in this petition the non-exhaustion of domestic remedies during the initial phase of the proceeding.

35. The Inter-American Court has established on numerous occasions that “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed”.

36. The Commission therefore considers that the State of Chile renounced its right to assert the objection of non-exhaustion of domestic remedies, since it failed to do so at the first opportunity which it had in the proceeding, namely, in its reply to the petition that gave rise to the proceeding.

2. Time allowed for presentation of the petition

37. In the petition under consideration, the IACHR has concluded that the State of Chile tacitly renounced its right to assert the objection of failure to exhaust domestic remedies, as a result of which the requirement of Article 46(1)(b) of the American Convention is not applicable. However, the provisions of the Convention requiring the prior exhaustion of domestic remedies and the lodging of the petition within a period of six months from the date of the final judgment of the domestic jurisdiction are independent. The Inter-American Commission must therefore determine whether the petition under review was presented within a reasonable period. In that

connection, the IACHR observes that the original petition was received on August 4, 1999 and that the last decision of a domestic court was handed down on April 28, 1999. The IACHR therefore considers that the petition was lodged within a reasonable period of time.

3. Duplication of proceedings and *res judicata*

38. The records do not show that the subject of the petition is pending in another international proceeding for settlement, nor that it duplicates a petition already considered by the Commission or by another international organization. It therefore considers the requirements set out in Articles 46(1)(c) and 47(d) of the Convention to have been met.

4. Characterization of the acts alleged.

39. The State requested the Commission to reject the complaint because it had fulfilled its obligations under the Convention in respect of the Articles alleged by the petitioners to have been violated.

40. The Commission considers that it is not necessary at this stage of the proceeding to determine whether or not provisions of the American Convention have been violated. For the purposes of admissibility, the IACHR must decide if the petition states facts that tend to establish a violation, as provided for in Article 47(b) of the American Convention, and if the petition is “manifestly groundless” or “obviously out of order”, according to subparagraph (c) of the same Article.

41. The criteria for determining whether these requirements have been met are different from those used to decide on the merits of a complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint establishes an apparent or potential violation of a right guaranteed by the Convention and not to establish whether a violation has occurred. Such an evaluation is a summary review that does not prejudice or advance an opinion on the substance. By establishing two distinct phases of admissibility and substance, the Regulations of the Commission reflect this separation between the evaluation to be carried out by the Commission for the purpose of declaring a petition admissible and that required to establish whether a violation has taken place.

42. With regard to the present petition, the Commission considers that the arguments presented by the State require in-depth analysis before any conclusions can be made. The IACHR therefore does not find that the petition is “manifestly groundless” or “obviously out of order”. The IACHR finds further that, *prima facie*, the petitioners have satisfied the criteria set out in Article 47(b) and (c).

43. The Commission considers that it is competent in this case to evaluate the alleged violations of the rights to humane treatment, a fair trial, protection against abusive or arbitrary interference in private life, protection of the family, equality before the law and access to simple and prompt judicial recourse, all of which are related to the obligation to respect and guarantee rights and the duty to bring domestic laws into line with the international commitments

undertaken by the State, which could constitute violations of the rights of the alleged victims set out in Articles 1(1), 2, 5, 8, 11, 17, 24 and 25 of the American Convention.

V. CONCLUSIONS

44. The Commission concludes that it is competent to consider the complaint lodged by the petitioners concerning the alleged violation of their right to humane treatment, a fair trial, protection against abusive or arbitrary interference in their private lives, protection of the family, equality before the law and access to simple and prompt judicial recourse, all of which are related to the obligations to respect and guarantee rights and the duty to bring domestic laws into line with the international commitments assumed by the State.

45. In light of the arguments of fact and of law set out above and without prejudice to the substance of the question,

The Inter-American Commission on Human Rights,

DECIDES:

1. To declare the present petition admissible under Articles 1(1), 2, 8, 11, 17, 24 and 25 of the American Convention.
2. To notify the State and the petitioner of this decision.
3. To initiate the proceeding on the substance of the question.
4. To publish this decision and include it in the annual report to be submitted to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C, on March 7, 2003. (Signed) Marta Altoaguirre, President; Clare Kamau Roberts, Second Vice-President; Members: Robert K. Goldman, Juan Méndez, Julio Prado Vallejo and Susana Villarán.