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Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause: Victor Amestica Moreno, Alberto Araneda Munoz, Hector Martinez Vazquez, Oscar Sepulveda Alarcon and Alejandro Cesar Sanchez Canales v. Chile
Doc. Type: Decision
Decided by: First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Commissioner Jose Zalaquett, President, a Chilean national, did not participate in the discussion or decision of the petition, in accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR.
Dated: 10 October 2003
Citation: Amestica Moreno v. Chile, Petition 12.233, Inter-Am. C.H.R., Report No. 58/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANT: the Corporacion de Promocion de Defensa de los Derechos del Pueblo – CODEPU
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I. SUMMARY

1. On November 1, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) received a petition from the Corporación de Promoción de Defensa de los Derechos del Pueblo – CODEPU (Corporation for the Promotion and Defense of Human Rights) (hereinafter “the petitioners”) against the Republic of Chile (hereinafter “the State” or “the Chilean State”), alleging that Víctor Améstica Moreno, Alberto Araneda Muñoz, Héctor Martínez Vázquez, Oscar Sepúlveda Alarcón, and Alejandro César Sánchez Canales, all members of Carabineros de Chile,[FN2] had been victims of an evaluation process carried out by officials of Carabineros de Chile, in which their basic rights were violated, and had then been expelled from the institution without due process. Further, they alleged that their respective spouses, Jenny Burgos Orrego, Marisol Valencia Poblete, Johanna Valdebenito Pinto, Carmen Araya Cordero, and María Angélica Olguín (hereinafter “the spouses of the Carabineros”) had been discriminated against for being wives of Carabineros.

[FN2] Carabineros de Chile is the Chilean Police force, and it is a technical and military institution, established in 1927. It is part of Chile’s Forces of Order and Public Security.

2. The petitioners alleged that the State was responsible for violating the right to privacy, the right of assembly, the right to private property, the right to equal protection, and the right to judicial protection, protected in Articles 11(2), 15, 21, 24, and 25 of the American Convention. With regard to the admissibility of the petition, the petitioners alleged that they had exhausted existing domestic remedies. The State maintained that the petitioners had not proven any of the allegations at the domestic level and that none of their rights had been violated. Further, the State requested that the petitioners' claims be dismissed and that the petition be declared inadmissible.

3. After examining the parties' allegations, the Commission conclude that it is competent to hear the petition presented by the petitioners and that the petition is admissible, in light of Articles 46 and 47 of the American Convention.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On November 1, 1999, the Commission received a petition presented by the Corporación de Promoción de Defensa de los Derechos del Pueblo (CODEPU), accusing the State of Chile of violating the rights of Víctor Améstica Moreno, Jenny Burgos Orrego, Alberto Araneda Muñoz, Marisol Valencia Poblete, Héctor Martínez Vázquez, Johanna Valdebenito Pinto, Oscar Sepúlveda Alarcón, Carmen Araya Cordero, Alejandro César Sánchez Canales, and María Angélica Olguín, as set forth in Articles 11(2), 15, 21, 24, and 25 of the American Convention.

5. On December 1, 1999, the Commission transmitted the pertinent parts of the petition to the State and established a 90-day deadline to present information on the facts and the exhaustion of domestic remedies.

6. On February 9, 2000, the State requested an extension for the presentation of its response. On February 22, 2000, the Commission decided to grant a 90-day extension. On June 7, 2000, the Permanent Mission of Chile to the Organization of American States asked for an additional 90-day extension, indicating that the competent authorities had not yet provided the necessary information to respond to the petition. On the same day, the Commission notified the State that the maximum period of time provided for in Article 34(6) of the Rules of Procedure of the Commission in effect at that time, had elapsed.

7. The information from the State was received on June 27, 2000, and was forwarded to the petitioners on July 18, 2000. The Commission set a 30-day period for the petitioners to present their comments. In August 28, 2000, the petitioners requested an extension for presentation of their comments.

8. The observations from the petitioners were received on September 20, 2000. The Commission also received a proposal by the petitioners to the State for a friendly settlement of the matter and a letter by the State replying that it would consider the proposal. That information was transmitted to the State on October 2, 2000, with a 30-day period for the State to make its observations. On January 29, 2001, the State presented its observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

9. The petitioners alleged that, due an additional economic benefit that they believe was unequally distributed, the wives of several Carabineros affected by that inequity held a demonstration in a downtown Santiago area, on April 27, 1998, Carabineros' Day. The petitioners pointed out that the institution Carabineros de Chile obligated all Carabineros to sign a document in which they pledged that neither their spouses nor their family members would participate in a demonstration. They maintained that signing that document was compulsory.

10. Further they said that Carabineros de Chile had started to harass the Carabineros, by illegally spying on many of their homes, including the homes of the alleged victims. They said that the institution had even tapped telephone lines and photographed many of the spouses while they were engaged in private and social activities. They said that, after the demonstration, many Carabineros were placed on List 4, of dismissal,[FN3] and subsequently discharged.

[FN3] In May of each year, the Annual Performance Evaluation is conducted among all Carabineros' personnel to assess the personal and professional conduct during the previous 12 months. The assessment is done by the Honorable Board for Evaluation of Chiefs and Carabineros and the Honorable Board of Appeals for Chiefs and Carabineros, pursuant to the Rule for the Selection and Promotion of Carabinero Personnel, N° 8. There are 4 possible qualifications: List 1, of merits, List 2, satisfactory, List 3, of probation, and List 4, of dismissal.

11. With regard to the Carabineros, alleged victims of this petition, the petition stated that:

On July 7, 1998, Víctor Améstica Moreno was notified of his dismissal from Carabineros de Chile. He claimed that he had been informed that the dismissal was due to "his failure to fulfill his duty of notifying his institutional superiors of the activities in his residence regarding mobilizations." [FN4] He indicated that he was dismissed without being shown a formal notice. He said that he had been denied the review procedures to which he was entitled. Likewise, he said that he had been told informally that the reason for his dismissal was his wife's participation in the April 27 demonstration. He added that, two years prior to being placed on List 4, of dismissal he had been ranked on List 1, of merits.

[FN4] See the petitioners' brief dated November 1, 1999, p. 5.

On July 8, 1998, Alberto Araneda Muñoz was notified that he was on List 4, of dismissal. In May 1998, he had been ranked on List 1, of merits. He noted that the evaluation board had summoned him subsequently to inquire about his wife's participation in the April 27 demonstrations and that he had said that his wife had given birth on April 8 and therefore did not leave home on the 27th. He added that he had been unofficially told that his dismissal was due to his wife's participation in the April 27 protests. Lastly, he said that he had been ranked on Lists 1 and 2 the two previous years.

On June 2, 1998, Héctor Martínez Vázquez was informed that he had been placed on List 1, of merits. Later, on July 2, 1998, he was summoned and told that he had been dismissed. After appealing that decision, on July 8, 1998, he was notified of his dismissal from the institution. The petitioner maintained that Mr. Martínez Vázquez had been told that the reason for his dismissal was that his wife had taken part in the April 27 protests. He said that at that time he had told his superiors that, as a result of an automobile accident, his wife had been in bed on the day of the protest and had therefore not been able to participate in it. He added that during his 10 years in the institution he had always been on List 1, of merits, with the exception of 1994 when he was on List 2, satisfactory.

Oscar Sepúlveda Alarcón was summoned by the Commander in June 1998 and interrogated about his family. The following day, he was informed that he had been placed on List 2, satisfactory. He said that five days later he was told that his prior ranking had been changed and that he had been placed on List 4, of dismissal. On July 8, 1998, he was told to return his police license plate and other service items. He indicated that during his 14 years of service in the institution he had always been on Lists 1 and 2, with the exception of 1997 when he was placed on List 3. Moreover, in 1998 he had not been given any days of detention as internal punishment.

Alejandro César Sánchez Canales was notified on July 7, 1998, that he was being dismissed from the institution. He said that he had not been given a copy of the decision. He explained that an investigation was conducted because of an altercation with a lieutenant who had not granted him authorization to take his son to the hospital. He said that he was then summoned and asked whether he had discussed the problems related to the salary increases with this wife, to which he answered in the negative. Likewise, he said that he had been asked whether he had had contact with the press concerning that problem, which he denied. Finally, he was notified of his dismissal.

12. According to the petitioners, dismissal of the Carabineros was a direct consequence of the demonstration held on April 27 by a group of carabinero's wives.

13. Regarding the admissibility, the petitioners maintained that they had exhausted the remedies available within Carabineros de Chile. They said that on July 18, 1998, they filed appeals against their dismissal with the Santiago Court of Appeals. They indicated that subsequently all the appeals were joined. They noted that on January 28, 1999, the Court of Appeals rejected their appeal. The Court found that it was not within their purview to examine the review board's basis for determining the rank which resulted in the dismissal of the Carabineros, since the boards were sovereign. The Court added that undertaking an examination of the grounds for the ranking, it would be constituting itself into another instance.

14. They said that this decision was confirmed by the Supreme Court of Chile on April 28, 1999, which found, with regard to the ranking process, that "it has not been proven or demonstrated in documents that it was the result of arbitrary or abusive behavior or that it was contrary to the constitutional or legal order, which is sufficient to bar acceptance of the appeals filed, without it being necessary to examine the guarantees that have allegedly been violated." [FN5]

[FN5] See the petitioners' brief dated November 1, 1999, p. 12.

15. The petitioners said that Carabineros officials had arbitrarily interfered with the private lives of the alleged victims by the ongoing monitoring and surveillance of part of the institution's personnel on active duty. They considered that to be a violation of privacy as protected under Article 11(2) of the Convention.

16. Likewise, they consider that the State had violated the right to the personal property of the Carabineros mentioned in their petition by depriving them of their right to an incorporeal good, namely their posts as Carabineros. Further, they view this violation as the result of an irrational procedure, which took into account factors other than their skills as professionals and civil servants.

17. Regarding the wives of the Carabineros, also alleged victims of the petition, they said that their right to assembly, protected under Article 15 of the American Convention, had been violated since they had been prevented from meeting and expressing themselves regarding an administrative matter within the Carabineros de Chile institution. They also considered that "it constitutes a violation of the law to punish civil servants for their spouses' legitimate exercise of that right." [FN6] Further, the petitioners considered that the right to equal protection under the law without discrimination was violated since the Carabineros' wives had been "indirectly discriminated against, inasmuch as they are civilian citizens, depriving them of their right to express themselves freely, to assemble, and to have a private life." [FN7]

[FN6] See the petitioners' brief dated November 1, 1999, p. 13.

[FN7] Ibid.

18. Lastly, the petitioners pointed out that Article 25 of the American Convention had been violated because, in the only effective appeal, the Santiago Court of Appeals had refrained from determining the merits and simply indicated that the matter was within the jurisdiction of the administrative authority.

19. In the petitioners' reply to the observations of the State, they said that the Government's observations showed that the Boards were sovereign and that they could therefore legally assess the conduct of the Carabineros by taking the conduct of their spouses into account. According to the petitioners, that showed that the Chilean State accepted the ranking of those civil servants according to criteria beyond their professional skills and even beyond their own personal attributes. They also considered that the State's affirmations that the institution Carabineros de Chile had special characteristics that imposed obligations on its members over and above those of the common citizen showed that those civil servants did not receive equal treatment with regard to other citizens. The petitioners added that "in our State we are not all equal and that

Carabineros de Chile is excluded from the national and international statute of fundamental rights.”[FN8]

[FN8] See the petitioners’ brief dated October 2, 2000, p. 5.

20. Regarding the State’s affirmations that the petitioners had not been able to prove at the internal level that their dismissals had been the result of their spouses’ conduct or that they had been the subject of surveillance or interference in their private lives, the petitioners maintained that it was difficult for the ordinary citizen to prevail over the State in any area.

21. Consequently, the petitioners claims that Articles 11(2), 15, 21, 24, and 25 of the American Convention have been violated.

B. Position of the State

22. The State expressed that Carabineros de Chile is a police, technical, and military institution, which is part of the public forces of order. It added that, because of its nature as an armed corps, “Carabineros is essentially obedient and non-deliberative, in addition to being professional, hierarchical, and disciplined.” It indicated that its special legal structure obligated it to place institutional and staff activities in a different conceptual and practical context from that of the civilian world, with a need to maintain ironclad discipline and respect for the hierarchical order.

23. Regarding the facts of this petition, the State said that, in 1998, some of the Carabineros’ wives had staged public demonstrations because they were displeased with the distribution of economic benefits. It added that some Carabineros had been anonymously interviewed by television channels and had made statements against their superiors. It considered that those activities, taken as a whole, were “a clear sign of a lack of discipline, in violation of existing rules and disruptive of the very foundations of any armed institution...”[FN9]

[FN9] See the observations of the State, dated June 2, 2000, p. 3.

24. The State explained that the ranking process had been carried out by a board of three individuals and that its decisions had been reviewed by another board, also made up of three individuals. It considered that in the present case the Carabineros had exercised their right to appeal against the decisions placing them on List 4, of dismissal and had even filed appeals that had gone as far as the Supreme Court. The State maintained therefore that there had been no violation whatsoever of any precept of the American Convention.

25. Regarding the rights that had been allegedly violated, the State noted, with respect to the right to privacy, that the Supreme Court had determined that the complains of the alleged victims could not be proven, in particular concerning the suspected ongoing monitoring or surveillance.

The State indicated that “it is the person making allegations who should prove them.” It maintained that the State had not interfered in the family life of the alleged victims or in their intimate relations. The State noted, however, that given the special statute governing the Carabineros, their families should abide by certain rules consistent with the type of activity performed by the civil servants, which were not the same as those of an ordinary civilian.

26. In relation to the right to assembly, the State considered that the Carabineros’ wives had, in fact, gathered and exercised that right, and further, that they had obtained legal authorization to do so from the Santiago Intendencia (the local government office).

27. With regard to the right to property, the State pointed out that, as far as jobs were concerned, that right was not absolute in Chile, which could be borne out by the evaluation process to which civil servants were subject. The State indicated that Article 21 of the Convention subordinated the use and enjoyment of property to the interest of society, which was obvious in that situation, according to the State. Otherwise, it would be obliged to retain inefficient or unruly civil servants, which, in the case of the police, would be a danger to society.

28. The State considered that the right to equality of the Carabineros’ wives had not been affected since they had been able to exercise their rights to assemble, express themselves, organize, and have private lives and that the petitioners’ arguments were contradictory. The State added the following:

It is a different matter to argue that their husbands were punished by dismissal from Carabineros because of their wives’ statements. In that connection, it is important to recall the special statute governing the Carabineros personnel as a professional, militarized, obedient, disciplined, and non-deliberative police force and the unavoidable impact of the functions of the Carabineros and the behavior of their family members. Even so, there is no clear evidence to corroborate the statements made in that regard by the petitioners nor is the situation characterized by inequality under the law or the absence of legal protection. The way in which Carabineros treats its personnel and their families is part of its own procedures and is consistent with the institution’s work, which by definition is exclusive and unique.[FN10]

[FN10] See the observations of the State, dated June 2, 2000, pp. 8 and 9.

29. Further, the State explained that these special characteristics do not signify that the carabinero family members receive different treatment under the law; what it means is that “it holds them more responsible for their acts and establishes an indissoluble link between children, the wife, and the role of father policeman.” The State denied that it had intervened in the petitioners’ family life; on the contrary, it added that it was some of the Carabineros’ spouses who had intervened by means of the media and public demonstrations in the relations between Carabineros as an institution and its personnel.

30. The State affirmed that the alleged victims had not been able to prove in the national courts that the civil servants had been ordered to prevent their wives from participating in public

demonstrations. The State specified the alleged victims had also been unable to prove that they had been expelled from Carabineros in response to their spouses' participation in public demonstrations.

31. Lastly, as far as judicial protection is concerned, the State indicated that the alleged victims had access to all levels of review under the law, allowing them to make their arguments, which in each case was evaluated and ruled on in accordance with the law.

32. In its observations on the petitioners' reply, the State reiterated in general terms its views that there was no violation of any right protected by the Convention and also that there was a special statute governing the behavior of those belonging to an institution like Carabineros, without this implying disregard for their fundamental rights. Regarding the inability of the alleged victims to produce evidence against the State, they considered this argument not to be credible since those involved were "professional policemen, trained to establish the corpus delicti and produce in court the means by which the crime was perpetrated and all necessary facts to prove it and single out its perpetrators." [FN11]

[FN11] See the observations of the State, dated January 26, 2001, p. 3.

33. Lastly, the State said that it had not violated any of the rules of the American Convention and that those rules that the petitioners claimed had been violated had been fully complied with. As a result, the State asked the Commission to dismiss the petitioners' arguments.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

34. 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.

35. 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.

36. 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.

37. 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

38. 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.

39. 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.

40. 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”.

41. 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 period for submission of the petition

42. In the present petition, the Commission has established the tacit waiver by the Chilean State of its right to present the objection asserting noncompliance with domestic remedies, which means that the requirement under Article 46(1)(b) of the American Convention is not applicable. However, the requirements under the Convention for exhaustion of domestic remedies and for lodging the petition within a period of six months of the final judgment under the domestic jurisdiction are independent. The Inter-American Commission should therefore determine whether the petition in question was presented within a reasonable period of time. In that regard, the Commission observes that the original petition was received on November 1, 1999. The final judgment of a domestic court took place on April 28, 1999. Consequently, the Commission finds that it was presented within a reasonable period of time.

3. Duplication of procedures and *res judicata*

43. It is not apparent from the file that the subject of the petition is pending in another international proceeding for settlement or is substantially the same as one previously studied by this or another international organization. Accordingly, the Commission considers the requirements established in Articles 46(1)(c) and 47(d) of the Convention to have been met.

4. Characterization of the facts alleged

44. The State asked the Commission to dismiss the petition because the State had met the obligations imposed by the Convention with respect to the articles that the petitioners alleged had been violated.

45. 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.

46. 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.

47. 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).

48. Although this has not been invoked by the petitioners and by virtue of the principle *iuria novit curia*, the Commission considers further that the acts described could constitute violations of the right to a fair trial, freedom of expression, and rights of the family. Likewise, the Commission considers that they could be violations of the State’s obligations under Articles 1(1) and 2 of the American Convention.

49. In the present case, the Commission deems that it is competent to evaluate the alleged violations of the right to privacy, the right to a fair trial, the right of assembly, the rights of the family, the right to private property, the right to equal protection, and the right to judicial protection, all of which are related to the obligations to respect and guarantee the rights and the duty to bring domestic legislation in line with the international commitments assumed by the State, which could be qualified as violations of the rights of the alleged victims embodied in Articles 1(1), 2, 8, 11, 13, 15, 17, 21, 24, and 25 of the American Convention.

V. CONCLUSIONS

50. The Commission concludes that it is competent to examine the case presented by the petitioners on the alleged violation of the right to privacy, the right of assembly, the right to

private property, the right to equal protection, and the right to judicial protection, all of which are related to the obligations to respect and guarantee the rights and the duty to bring domestic legislation in line with the international commitments assumed by the State.

51. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare that the present case is admissible with respect to Articles 1(1), 2, 8, 11, 13, 15, 17, 21, 24, and 25 of the American Convention.
2. To notify the State and the petitioner of this decision.
3. To continue the analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report, to be submitted to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 10th day of the month of October, 2003. (Signed): Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.