

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 21/04; Petition 12.190
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)
Title/Style of Cause: Jose Luis Tapia Gonzales, Jose Alejandro Villagran Guzman, Luis Eduardo Hernandez Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irrarrazabal, David Matias Alvarez Alvarez, Victor Alejandro Lago Maldonado, Giny Escobar Lara, Rosa Paz Valdes, Sonia Valencia Torres, Claudia Bustamante Torres, Sandra Duran Villegas, Olga del Carmen Becerra Perez and Ana Maria Aguilera Saldivia v. Chile
Doc. Type: Decision
Decided by: First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.
Commissioner Jose Zalaquett, President of the Commission, a Chilean national, did not participate in the consideration of or vote on this case, in keeping with Article 17(2)(a) of the Commission's Rules of Procedure.
Dated: 24 February 2004
Citation: Tapia Gonzales v. Chile, Petition 12.190, Inter-Am. C.H.R., Report No. 21/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: Luis Antonio Acevedo Villavicencio and Leopoldo Sanchez Grunert
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I. SUMMARY

1. On June 18, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by attorney Luis Antonio Acevedo Villavicencio and Leopoldo Sánchez Grunert (hereinafter “the petitioners”) against the Republic of Chile (hereinafter “the State” or “the Chilean State”) in which it is alleged that José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irrarrazabal, David Matías Álvarez Álvarez, and Víctor Alejandro Lago Maldonado, all members of the Carabineros de Chile,[FN2] and their respective spouses Giny Escobar Lara, Rosa Paz Valdés, Sonia Valencia Torres, Claudia Bustamante Torres, Sandra Durán Villegas, Olga del Carmen Becerra Pérez, and Ana María Aguilera Saldivia (hereinafter “the wives of the Carabineros”), were subjected to an evaluation process and then dismissed. They allege that there was a denial of justice by the highest judicial organs of the Chilean State, as they were victims of a judicial process that violated their basic rights and in which they had no judicial guarantees.

[FN2] Carabineros de Chile is a police, technical, and military institution, established in 1927, which is part of the Forces of Order and Public Security of Chile.

2. In relation to the admissibility of the claim, the petitioners alleged that they exhausted all the domestic remedies available to them to seek protection for the rights that were violated. The State, for its part, argues that no right contained in the American Convention has been violated. It asks that the petitioners' claims be dismissed and that the petition be declared inadmissible.

3. After analyzing the parties' positions, the Commission concludes that it is competent to take cognizance of the petition presented by the petitioners and that it is admissible, pursuant to Articles 46 and 47 of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

4. On June 18, 1999, the Commission received a petition submitted by Luis Antonio Acevedo Villavicencio and Leopoldo Sánchez Grunert alleging that the Chilean State violated the rights of José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irrazabal, David Matías Álvarez Álvarez, Víctor Alejandro Lago Maldonado, Giny Escobar Lara, Rosa Paz Valdés, Sonia Valencia Torres, Claudia Bustamante Torres, Sandra Durán Villegas, Olga del Carmen Becerra Pérez, and Ana María Aguilera Saldivia, by denying them justice.

5. On August 2, 1999, the Commission transmitted the pertinent parts of the complaint to the Chilean State, and in keeping with the Commission's Regulations in force at that time set the term of 90 days for it to submit information on the facts and on the exhaustion of domestic remedies.

6. On November 16, 1999, the Chilean State asked the Commission for an extension to submit its response. On November 29, 1999, the Commission granted a 90-day extension. On June 2, 2000, the Chilean State sought a new 90-day extension, indicating that the relevant authorities had not yet provided the information needed to answer the request. On June 7, 2000, the Commission told the State the maximum time period provided for in Article 34(6) of the Commission's Regulations in force at that time had elapse, and asked that it remit the information in the shortest possible time.

7. The information from the State was received on June 27, 2000, and was forwarded to the petitioners on July 18, 2000; the Commission gave them 30 days to submit their observations. On September 15, 2003, the Commission gave the petitioners one month to deliver their observations regarding the State's response.

8. To this day the petitioners have not provided their observations on the response of the Chilean State.

III. THE PARTIES' POSITIONS

A. The petitioner's position

9. The petitioners allege that in the wake of the distribution of an additional economic benefit that they characterize as unequal, on April 27, 1998, the date on which the day of the Carabinero is celebrated in Chile, the wives of several Carabineros negatively affected by that distribution staged a protest. They add that none of the wives of the alleged victims was present at that demonstration.

10. They assert that after the protest, the Director General of Carabineros, in various statements, indicated that the husbands of the women implicated in the protests would be accused of unlawful sedition (*sedición impropia*). The petitioners argue that it was an effort to discharge those officers for offenses allegedly committed by their wives. They add that the petitioners were evaluated in List 4, for elimination,[FN3] and later dismissed, even though they had been evaluated in List 1, for merit, a short time earlier.

[FN3] In May of each year a Process of Annual Evaluation is held in Carabineros de Chile for the purpose of evaluating the personal and professional standing of all the Carabineros, for the past 12 months. That evaluation is made by the Honorable Junta Calificadora de Cabos y Carabineros and the Honorable Junta de Apelaciones de Cabos y Carabineros, in keeping with the provisions of Rule 8 on Selection and Promotion of Carabineros Personnel. There are four possible evaluations: List 1, for merit, List 2 for satisfactory, List 3 for observation, and List 4 for elimination.

11. According to the petitioners, the evaluation that led to the dismissal of the Carabineros was a direct result of the demonstration held April 27. They add that their wives did not participate in the demonstration and that their involvement was not shown in a trial with the necessary judicial guarantees.

12. On referring to admissibility, the petitioners argued that they exhausted available remedies in the Chilean judicial system. They indicate that on July 18, 1998, *recursos de protección* were filed before the Court of Appeals of Santiago, against the dismissals. They note that on January 28, 1999, the Court of Appeals rejected the motions, arguing that it was not its role to examine the grounds considered by the Evaluation Boards (*Juntas Calificadoras*) to arrive at the evaluation that resulted in the discharge of the Carabineros, and added that if it were to do so, it would be sitting in review of the earlier decision.

13. They note that this resolution was affirmed by the Supreme Court of Chile on April 28, 1999. It endorsed the decision by the Court of Appeals, stating that "it appears in the record that the evaluation process involving the appellants took place, in terms of its form, entirely in keeping with the procedural rules and time frames established in the rules of procedure." [FN4]

[FN4] See petitioners' brief of May 11, 1999, p. 3.

14. They argue that the alleged victims did not have access to the files, nor did they participate at all in the process and as a result of the impossibility of producing and challenging evidence they were unable to avail themselves fully of the right to defense. They add that there was no meticulous investigation, for had there been one it would have been shown, for example, that Rosa Paez Valdés, the wife of second corporal José Alejandro Villagrán Guzmán, was at the Hospital de Carabineros receiving medical care on same the day and at same the time as the demonstration. In addition, they state, it would have been found that officer Víctor Alejandro Lago Maldonado's signature was falsified on the document that presumably notified him of the evaluation. They also indicate that he was on medical leave from the Carabineros at that time because of a broken hand.

15. They allege that "civil liability is strictly personal" and that they should not be held responsible for other parties' actions, in the instant case for their wives'. Further, they consider that this should have been decided "by the competent courts of law, in this case the Civil Court of Justice, and not by an administrative body from Carabineros, or any administrative body for that matter".[FN5]

[FN5] See petitioners' brief of May 11, 1999, p. 3.

16. Finally, the petitioners state that the evaluation process was performed "with zeal of persecution, silencing, and repression of the legitimate demands and aspirations brought by third persons, other than the complainants, accordingly, that the evaluation process has turned out to be irrational, unfair, disproportionate, and inequitable, not conducted in good faith, and has entailed an abuse of authority." [FN6] They indicate that despite it appearing in the record that the Carabineros officers did not participate at all in the April 27, 1998 demonstration, they were dealt with in an illegal and arbitrary manner, since the evaluation placing them on the List of Elimination was made without any basis, without due process, and without the grounds for the evaluation leading to discharge having been set forth in writing.

[FN6] See, petitioners' brief of May 11, 1999, p. 4.

b. The State's position

17. The State notes first that Carabineros de Chile is a police, technical, and military institution that is among the official forces of order. It adds that by its nature as an armed body, "Carabineros is essentially obedient and not deliberating, in addition to being professional, hierarchically organized, and disciplined." [FN7] It notes that as a result, its special legal status requires that the institution's actions and those of its personnel be considered, conceptually and

practically, different from that of civilian institutions, as iron discipline and respect for the hierarchical order must be maintained.

[FN7] See, answer brief by the State of June 26, 2000, p. 2.

18. With respect to the facts that gave rise to this case, the State argues that in 1998, in response to discontent over the distribution of benefits, some of the wives of Carabineros personnel held several public protests. They add that some Carabineros, protected by anonymity, were interviewed by television stations making statements against their commanders. The State considers that those activities, considered together, constituted a “manifest act of indiscipline, contrary to the law in force at the time, and tending to weaken the very bases of any armed institution...”[FN8]

[FN8] See, answer brief by the State of June 26, 2000, p. 3.

19. The State explains that the evaluation process is performed by “a collegial body called the Honorable Junta Calificadora de Cabos y Carabineros, which is to review cases where there is disagreement, and also the Honorable Junta de Apelaciones de Cabos y Carabineros, also made up of three persons, who evaluate the facts, providing the person being evaluated with the opportunity to be heard one more time.”[FN9] It considers that in the instant case, the Carabineros exercised their right to appeal the resolutions by which they were evaluated in List 4, for elimination, indeed pursuing judicial remedies that reached the Supreme Court. The State argues, accordingly, that there has been no violation of any provision of the American Convention.

[FN9] See, answer brief by the State of June 26, 2000, p. 3.

20. Accordingly, it asks the Commission to dismiss the petitioners’ claims and to declare the petition inadmissible, arguing that the facts set forth by the alleged victims do not tend to establish any violation of the rights contained in the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

21. 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.

22. 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.

23. 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.

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

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. 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.

26. 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.

27. The Inter-American Court has established repeatedly 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.”[FN10]

[FN10] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, June 26, 1987, para. 88.

28. 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 for submitting the petition

29. In the petition being considered, the IACHR has established the tacit waiver by the Chilean State of its right to invoke the objection of failure to exhaust domestic remedies,

consequently, the requirement of Article 46(1)(b) of the American Convention does not apply. Nonetheless, the Convention's requirements of exhaustion of domestic remedies and submission within six months of the judgment that exhausted the domestic jurisdiction are independent. Therefore, the Inter-American Commission must determine whether the petition was submitted within a reasonable time. In this regard, the IACHR observes that the original petition was received on June 18, 1999. In addition, the last decision of a domestic court was handed down on April 28, 1999. Accordingly, the IACHR considers that it was submitted within a reasonable time.

3. Duplication of procedures and *res judicata*

30. It does not appear from the record that the subject matter of the petition is pending in another international proceeding for settlement, nor that it reproduces a petition already examined by this or any other international organization. Therefore, the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the facts alleged

31. The State asked the Commission to dismiss the complaint because it complied with the obligations imposed by the Convention and that the alleged victims at no time established which rights in the Convention had been violated.

32. The Commission considers that it is not appropriate at this stage of the procedure to establish whether there has been a violation of the American Convention. For the purposes of admissibility, the IACHR must decide whether the facts alleged tend to establish a violation, as stipulated by Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c).

33. The margin of appreciation of these provisions is different from that required to decide on the merits of a complaint. The IACHR must make a *prima facie* evaluation to examine whether the complaint establishes the apparent or potential violation of a right guaranteed by the Convention, and not to establish the existence of a violation. Such an examination is a summary analysis that does not imply any prejudice or preliminary opinion on the merits. By establishing two distinct phases of admissibility and merits, 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

34. With respect to this petition, the IACHR does not find that the petition is "manifestly groundless," or that it is "obviously out of order." In addition, the IACHR considers that *prima facie* the petitioners have shown that they meet the requirements of Article 47(b) and (c).[FN11]

[FN11] The IACHR has previously admitted the following petitions related to Carabineros and the events of April 27, 1998: Report 31/03 Petition 12,195, Report 58/03 Petition 12.233, and Report 32/02 Petition 12,281.

35. With respect to the argument according to which the Commission must declare this case inadmissible, due to the fact that the petitioners have not alleged the specific articles that they consider violated, the Commission wishes to recall that the petitioners are only obligated to present, in the complaint, the facts or situation that lay the foundation for a possible violation of rights under the Convention; they are not obligated to name the specific articles they consider violated.[FN12] In addition, Article 46(1) of the Convention and Article 28 of the Commission's Rules of Procedure do not establish, among the requirements for admitting petitions, that the articles that contain the rights considered violated be specified.

[FN12] IACHR Report 24/99, Gabriel Lastra, Case 11.812 para. 22. I/A Court H.R. Hilaire et al. Case, Preliminary Objections, Judgment of September 1, 2001, paras. 39-42.

36. Accordingly, and although they have not been invoked by the petitioners, applying the principle *iuria novit curia*, the Inter-American Commission considers that the facts described constitute violations of the right to a fair trial and the right to judicial protection, protected by Articles 8 and 25 of the American Convention. In addition, the Commission considers that they could constitute violations of the State's obligations under Articles 1(1) and 2 of the American Convention.

37. The Commission considers that in the instant case it is competent to evaluate the alleged violations of the rights to a fair trial guarantees and to judicial protection, all related to the obligations to respect and ensure the rights and the duty to bring the domestic legislation into line with the international commitments assumed by the State, which could tend to establish violations of the rights of José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mievilla, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irrarrazabal, David Matías Álvarez Álvarez, and Víctor Alejandro Lago Maldonado, enshrined in Articles 1(1), 2, 8, and 25 of the American Convention. As regards their respective wives, Giny Escobar Lara, Rosa Paz Valdés, Sonia Valencia Torres, Claudia Bustamante Torres, Sandra Duran Villegas, Olga del Carmen Becerra Pérez, and Ana María Aguilera Saldivia, the IACHR considers that the complaint does not describe any fact that could constitute a violation of their human rights. Accordingly, the facts alleged do not tend to establish violations of human rights to their detriment.

V. CONCLUSIONS

38. The Commission concludes that it is competent to examine the case presented by the petitioners regarding the alleged violation of the rights to a fair trial and to judicial protection, all related to the obligations to respect and ensure the rights and the duty to bring the domestic legislation into line with the international commitments assumed by the State.

39. In light of the arguments of fact and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition under consideration admissible, in relation to Articles 1(1), 2, 8 and 25 of the American Convention with respect to José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irarrazabal, David Matías Álvarez Álvarez, and Víctor Alejandro Lago Maldonado.
2. To declare the petition inadmissible with respect to Giny Escobar Lara, Rosa Paz Valdés, Sonia Valencia Torres, Claudia Bustamante Torres, Sandra Durán Villegas, Olga del Carmen Becerra Pérez, and Ana María Aguilera Saldivia, pursuant to the Article 47(b) of the Convention.
3. To give notice of this decision to the State and the petitioner.
4. To initiate the processing on the merits.
5. 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., February 24, 2004. (Signed): Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez and Florentín Meléndez Commissioners.