

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 80/09; Petition 12.337
Session:	Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause:	Marcela Andrea Valdes Diaz v. Chile
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo G. Carozza. Pursuant to Article 17(2)(a) of the Rules of Procedure of the IACHR, Felipe Gonzalez, a Chilean national, did not participate in the discussion or decision in the present case.
Dated:	6 August 2009
Citation:	Valdes Diaz v. Chile, Petition 12.337, Inter-Am. C.H.R., Report No. 12.337, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: Juan Pablo Olmedo Bustos and Ciro Colombara Lopez
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On October 4, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by the Fundación Instituto de la Mujer (hereinafter “the petitioner”), represented by attorneys Juan Pablo Olmedo Bustos and Ciro Colombara López. The petition alleges that the State of Chile (hereinafter “the State” or “the Chilean State”) violated Articles 1(1), 2, 5, 8, 11, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter the “Convention of Belém do Pará”) to the detriment of Marcela Andrea Valdés Díaz (hereinafter “the alleged victim”).

2. The petitioner argues that Mrs. Marcela Andrea Valdés Díaz was a member of Carabineros de Chile [the Chilean police] and that upon getting married in 1994 to Claudio Vázquez Cardinalli, a captain in Carabineros de Chile, she became subject to physical and psychological abuse on the part of the latter, a fact that was brought to the attention of both Carabineros de Chile and the judicial authorities. The petitioner says that Mrs. Marcela Andrea Valdés obtained a court order of permanent protection in 1999. The petitioner says that subsequently, both Mrs. Valdés and her husband asked their superiors for permission to live separately, which was granted.

3. The petitioner claims that based on the foregoing request, the (police) Prefecture of Valdivia opened a summary proceeding to investigate Mrs. Valdés marital relationship, which resulted in the adoption of resolution 14 of June 4, 1999, whereby she was sentenced to 15 days of detention, while two other police officers were given lesser penalties. Before the final decision was delivered, she filed for relief from the courts, whereupon she was sentenced to additional time under arrest for having sought judicial remedies before exhausting the administrative channels. The petitioner says that as a result of these sanctions, she was ultimately discharged. The petitioner adds that Mrs. Valdés went to court to file an appeal challenging her discharge, but her appeals were denied without an examination of the merits of her claims.

4. On October 10, 2003, the Inter-American Commission on Human Rights adopted Report 57/03, in which it decided to admit the petition with respect to the alleged violations of Articles 5, 8, 11, 24, and 25 of the American Convention, in connection with Articles 1(1) and 2 of said instrument, and also with respect to the alleged violation of Article 7 of the Convention of Belém do Pará. Subsequently, in 2006, the State of Chile expressed its readiness to open a dialogue with a view to exploring the possibility of reaching a friendly settlement under the terms of Article 48(1)(f) of the American Convention, which was accepted by the petitioners. The Commission facilitated this process through the exchange of written information as well as through working meetings held at the headquarters of the IACHR.

5. On March 11, 2008, the representatives of the State and the petitioners signed a friendly settlement agreement in the course of the 131st regular session of the Inter-American Commission.

6. Pursuant to Articles 49 of the Convention and 41(5) of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the petitioners' allegations, the friendly settlement agreement reached, and the IACHR's decision to publish it.

II. PROCESSING BY THE COMMISSION

7. Following the adoption of Admissibility Report 57/03, in a communication dated October 27, 2003, the Commission transmitted said report to the parties and granted both the State and the petitioners a short period to respond to the offer of the Commission to place itself at the disposal of the parties pursuant to Articles 48(1)(f) of the American Convention. The petitioners submitted additional observations on merits in a communication dated December 8, 2003, which were relayed to the State in a communication of April 29, 2004, with the request that it present its comments within two months. On April 29, 2004, the IACHR acknowledged receipt of another communication from the petitioner, dated December 8, 2003, in which it authorized Mrs. Carolina Contreras Dupre to act as co-petitioner.

8. In a communication of February 1, 2006, the State expressed its will to the IACHR to submit to a friendly settlement procedure. On February 28, 2006, the IACHR placed itself at the disposal of the parties in order to initiate a friendly settlement procedure. On March 2, 2006, Mayer, Brown, Rowe & Maw LLP and associate professors Valorie K. Vojdik and Julie Goldscheid from West Virginia University and CUNY law schools, respectively, submitted an amicus curiae brief in support of the petitioner's arguments, which was forwarded to the parties

on March 23, 2006. The petitioners sent the Commission another communication on April 19, 2006. On May 11, 2006, the Commission acknowledged receipt of the petitioner's communication of April 19, 2006, and again placed itself at the disposal of the parties with a view to initiating a friendly settlement procedure. The petitioners reiterated their willingness to initiate a friendly settlement procedure in a communication received on July 5, 2006, and sent another communication on July 10, 2006. The IACHR transmitted the above communications to the State on August 4, 2006. The parties met at the 126th regular session of the IACHR in October 2006.

9. The parties also met in the course of the 127th session of the IACHR in March 2007. The Commission received a communication from the petitioner on May 3, 2007. On June 7, 2007, the State sent the IACHR a communication which was sent to the petitioner on June 28, 2007. On June 25, 2007, the State requested a working meeting during the 128th regular session of the IACHR. In view of the fact that, by then, the IACHR had already approved, within the regulation time limits, the work program for the 128th regular session, the Commission informed the State in a communication of June 28, 2007, of its refusal of the above request. On September 4, 2007, the petitioner requested a working meeting, which was held in October 2007, in the course of the 130th regular session of the IACHR. On September 28, 2007, the petitioner sent information on progress in the friendly settlement procedure, which was transmitted to the State on November 19, 2007. The State sent a communication on September 11, 2007.

10. On January 2, 2008, the State sent the IACHR a draft friendly settlement agreement which had already been brought to the attention of the petitioner. The Commission acknowledged receipt of this communication on January 10, 2007. On February 14, 2008, the IACHR received a new communication from the State, enclosed in which was the draft friendly settlement agreement to be signed by the parties. The State and the petitioner signed the friendly settlement agreement on March 11, 2008, at a working meeting held at the request of the State of Chile during the 131st regular session of the IACHR.

11. On August 5 and 18, 2008, the IACHR received communications from the State in which it provided information on progress in implementation of the friendly settlement agreement. Those communications were transmitted to the petitioner on August 20 and November 19, 2008, respectively. On September 23, 2008, the State sent the Commission a communication which was forwarded to the petitioner on November 19, 2008.

III. THE FACTS

12. The petitioner states that the alleged victim was a member of Carabineros de Chile since 1991 and married Claudio Vázquez Cardinalli, a Carabineros captain, in 1994. The petition notes that since the beginning of her marriage the alleged victim suffered physical and psychological abuse from her husband. The petitioner says that in 1999, Mrs. Marcela Andrea Valdés Díaz was a lieutenant serving in the First Precinct of Valdivia Prefecture No. 23.

13. The petitioner claims that Carabineros de Chile was aware of the physical and psychological abuse which Mrs. Marcela Valdés suffered from her husband. According to the petitioner, the foregoing is proven by Resolution No.15 of the Office of Valdivia Prefecture No.

23[FN2], which says that on March 29, 1999, the Chief of Valdivia's First Precinct reported a complaint filed by Marcela Valdés Díaz concerning the couple's marital problems. The matter was referred to Social Services. The same resolution also mentions that on April 23, 1999, the division in which Mrs. Valdés served was informed that on April 11, 1999, the Precinct Chief himself had gone to the couple's residence because of a marital dispute caused by a telephone conversation between Mrs. Valdés and a fellow Carabinero and friend.

[FN2] Resolution No.15 of the Office of Valdivia Prefecture No. 23, IX Araucanía Carabineros Zone, para. 2.

14. The petitioner also says that the abusive treatment is on record in Carabinero report No. 801 of May 19, 1999, and led to the filing of a complaint of abuse with the Valdivia First Court of First Instance on May 19, 1999. The petitioner says that this proceeding ended on May 25, 1999, with a court settlement reached in the conciliation hearing required under Chilean law on domestic violence. The petitioner notes that as a result of this conciliation hearing, the alleged victim obtained a court order of permanent protection whereby she was authorized to leave the city with her children in order to avoid "future troubles or physical and psychological aggression."

15. The petitioner says that in the wake of the above court decision, the alleged victim and her husband requested their superiors' authorization to live separately, which was granted on June 4, 1999, by Resolution No. 14 of Valdivia Prefecture No. 23. The petitioner mentions that as a result of this request, the Valdivia Prefecture ordered a summary inquiry, which concluded with Resolution No. 15 issued on June 7, 1999.

16. The petitioner notes that Resolution No. 15 of June 7, 1999, ordered the alleged victim's arrest for ten days on the grounds of "unbecoming private conduct" for having maintained a deep friendship with Lieutenant (I) Manuel Andrés Suazo Erbade. The resolution found that the alleged victim had "started a friendship" with the lieutenant. The Resolution states that "although the inquiry was unable to establish whether the friendship had developed into a romance, there were grounds to conclude that the relationship had provoked gossip to that effect and led to the breakup of the marriage" with Captain Claudio Aurelio Vásquez Cardinalli, and that the situation had grown to include officers and certain civilians, thus disrupting the professional work of the Unit and sullyng the institution's good name.

17. The petitioner also observes that the above resolution sentenced the alleged victim's husband to four days' arrest for having "provoked domestic violence in the home by beating his wife." It also sentenced Lieutenant Manuel Andrés Suazo Erbade to ten days' arrest for having "displayed a series of improper behaviors ... prejudicial to the institution's reputation and to the work of the professionals in the First Valdivia Precinct; by his attitude, he was responsible for the irreversible breakup of the marriage."

18. The petitioner says that Mrs. Marcela Andrea Valdés Díaz appealed Resolution No. 15 by way of an administrative action filed with the IX Carabineros Zone, which, on July 7, 1999,

issued Resolution No. 26, confirming the disciplinary measure imposed. The petitioner says that Mrs. Valdés appealed this resolution before the Office of the Director of Order and Security of the Carabineros de Chile. On October 28, 1999, the latter issued Resolution No. 161, denying the appeal filed and increasing her penalty to “15 days’ arrest, with duty”. It also denied any further administrative appeal.

19. The petitioner explains that while her administrative appeal was pending, on June 14, 1999, the alleged victim filed an appeal with the Valdivia Appellate Court seeking relief from Resolution No. 15 of June 7, 1999. The latter appeal was subsequently withdrawn.

20. The petitioner claims that as a result of the appeal before the regular courts system, Valdivia’s First Precinct issued Resolution No. 12, dated July 14, 1999, punishing Marcela Valdés Díaz with another “three days’ arrest with duty.” That resolution states that the penalty was imposed because the alleged victim, “foolishly and without exercising judgment, took a purely administrative matter to the regular courts, thus venturing beyond the framework of the institution. She did so when the proper regulatory authorities, to whom she was exercising her right to appeal, had not yet delivered their ruling.”

21. The petitioner notes that the alleged victim appealed this measure with Valdivia Carabineros Prefecture No. 23, but her appeals were denied and the penalty was increased to five days’ arrest. The alleged victim also appealed this decision with the IX Araucania Carabineros Zone, which on September 16, 1999, issued Resolution No. 28, wherein it denied the appeal and upheld the disciplinary measure imposed.

22. The petitioner claims that because of the disciplinary measures imposed on her, the Junior Officers Classifications Board proceeded to review the alleged victim’s record for 1999. On August 11, 1999, the Board found that the alleged victim’s “personal and moral character and professional credentials were seriously flawed” and, therefore, amended her rating from “List Two, Satisfactory” to “List Four, Dismissal.” The petitioner indicates that an appeal of this decision was filed with the Merits and Appeals Board, which on September 1, 1999, decided to reject her appeal and keep her rating as List Four, Dismissal. An oral appeal of this decision was lodged with the Superior Appellate Board, which on September 21, 1999, denied the appeal. The petitioner says that with that, by Supreme Decree No. 764 the Ministry of Defense ordered her “unconditional discharge” effective as of January 2, 2000.

23. In response to the decisions of the Superior Appellate Board and Resolution No. 161 of October 28, 1999, which increased her penalty to “15 days’ arrest, with duty,” without the possibility of appeal, the alleged victim filed an appeal for constitutional relief with the Santiago Appellate Court, against the Department of Personnel, Dept. P.1 and the Office of the Director of Order and Security, both units of Carabineros. In her appeal, the alleged victim argued that the decisions that led to her discharge and the inquiry that served as the basis for said discharge “are arbitrary and unlawful inasmuch as they violate constitutional guarantees... namely, equality before the law, due process, the right to humane treatment, privacy and the right to have one’s honor respected, and the protection against arbitrary or abusive interference with private life, home or personal correspondence.”

24. On March 14, 2000, the Court denied the appeal on the grounds that Carabineros had done nothing unlawful or abusive; that there were no procedural errors in the rating procedure, and that the conduct of the police authorities was based on "substantive assessments that, on the one hand, are the exclusive purview of that authority and, on the other hand, do not appear to be unreasonable or beyond the realm in which the institution in question operates or moves." The Supreme Court upheld this decision in a ruling on April 5, 2000.

IV. FRIENDLY SETTLEMENT

25. Mrs. Marcela Andrea Valdés, represented by her attorney Juan Pablo Olmedo; the representatives of the State; the Director for Human Rights of the Ministry of Foreign Affairs of Chile, Ambassador Juan Aníbal Barría; the Inspector General of Carabineros and National Director of Personnel, Gustavo González Jure; and the Rapporteur on Women's Rights of the IACHR, Luz Patricia Mejía, signed the friendly settlement agreement on March 11, 2008, the text of which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT

The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") began to process the present petition in 1999. The petition was lodged as a consequence of the results of the rating process for that year, which led to the unconditional discharge from Carabineros de Chile of Mrs. Marcela Valdés Díaz (hereinafter "the petitioner"), on account of conflicts arising from circumstances involving domestic violence and failure to observe the regular procedure in presenting her defense in administrative proceedings.

The petition was admitted for processing on October 2003, and the IACHR concluded in its Report on Admissibility (57/03) that the facts alleged in the petition warranted a decision on the violation by the State of Chile of the rights guaranteed in Articles 5, 8, 11, 24, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the Treaty") as well as the breach of the obligations set forth in Articles 1(1) and 2 of the Treaty and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "the Convention of Belém do Pará").

The State of Chile recognizes that the violation of the petitioner's rights constitutes an isolated incident in the history of the institution of Carabineros de Chile, given that the process of alignment of its laws with international -and in particular inter-American- standards on gender equity and domestic violence dates from the 1990s, especially following the adoption in its domestic laws of provisions in those respects. At present the situation is different, given that the advancement and protection of fundamental rights are a standing concern and priority for the institution's authorities and personnel.

Having said that, the present case before the IACHR has enabled the institution to enhance and strengthen its efforts as regards prevention of violence against women.

On January 2006, the parties, by common consent and with the IACHR acting as facilitator, submitted to a friendly settlement procedure and reached full agreement on the following

undertakings that the State of Chile adopts with a view to providing reparation to the petitioner for the adverse consequences of these events.

1. Non Repetition Measures:

- a. Review, update, and enhancement of legal and regulatory standards on domestic violence, with an emphasis on situations that affect police officials and on prevention measures, inter alia, on sexual harassment.
- b. Strengthening of study course contents connected with human rights at all levels and in all education processes in the institution.
- c. Continue to hold training workshops and seminars on matters related to protection for women and the police role, strengthening, in particular, assistance for victims of domestic violence, the social dimension of the socio-cultural phenomenon of domestic violence and its legal implications, domestic violence, femicide, and learning disorders in children.
- d. Bearing in mind that the State of Chile, under the coordination of the Gender Equity Advisory Office of the Ministry of Defense, set up a working group composed of representatives of the Armed Services, Security Forces, and the Investigation Police, as well as their respective retirement funds, in order to detect possible gender inequities through a complete review of institutional rules and regulations, this group will strengthen its attention to matters connected with domestic violence in the above-mentioned institutions. Furthermore, taking into account that at an initial stage various nongovernmental organizations and leading scholars participated, describing their experiences and contributing their views and observations on the matters with which the working group is concerned, an invitation will be sent to the petitioner's lawyers before the IACHR, in their capacity as members of the organization representing this case, Fundación Pro-Bono.

In this regard, the parties expressly state for the record their desire that the experience of creating this working group, as well as its organization and work, and the results thereof, serve as a stimulus and example of good practices for the region and the international community.

Finally, it should be mentioned that the Executive Secretariat of the IACHR will be duly informed of each of the various activities carried out.

2. Specific Reparation Measures:

Publication of a summarized version of the text of the present agreement in the Official Gazette of the Republic of Chile as well as on the web sites of the Ministry of Defense and Carabineros de Chile.

3. Health Care Services:

The petitioner will continue to receive care at, irrespectively, Hospital de Carabineros "DEL GENERAL HUMBERTO ARRAIGADA VALDIVIESO" or the Hospital of the Carabineros Social Security Department, "HOSPITAL TENIENTE HERNAN MERINO CORREA, under the modalities and conditions offered by the National Health Fund (FONASA).

4. Economic reparation:

As reparation for material and nonpecuniary damages, the petitioner will receive a one-time total payment of the equivalent in pesos of US\$ 50,000 (fifty thousand US dollars), which amount shall be paid directly by means of a money order to Mrs. Marcela Valdés Díaz.

5. Court costs:

The State of Chile shall reimburse part of the litigation costs which have been appraised at the one-time total sum of US\$ 6,000, which it is requested be paid directly to Fundación Pro Bono, a Chilean nongovernmental organization, whose support, provided in the situation that she had to face as a result of the acts denounced in the petition to the IACHR, Marcela Valdés hereby acknowledges.

6. Interpretation

The meaning and scope of this agreement shall be interpreted in accordance with Article 29 and 30 of the Convention, as applicable, and with the principle of good faith. In case of doubt or disagreement between the parties on the content of this agreement, the Commission shall determine its interpretation. It shall also be responsible for monitoring the agreement's compliance.

7. Approval

The State of Chile and the petitioners agree to refer this friendly settlement agreement to the Inter-American Commission on Human Rights for its approval and publication in accordance with Article 49 of the American Convention on Human Rights and 41(5) of the Rules of Procedure of the Inter-American Commission on Human Rights.

Finally, the petitioner declares that the measures agreed and the undertakings given by the State under the present friendly settlement agreement shall be the only ones enforceable and that there are no other claims, acts, or undertakings to be formulated or sued for with respect to the acts that gave rise to the filing of the petition identified as Case 12.337.

Signed in four copies, at the headquarters of the Inter-American Commission on Human Rights, Washington, D.C., USA, during its 131st regular session, March 11, 2008.

V. COMPLIANCE

26. As to the first undertaking contained in the agreement regarding non repetition measures, the State reported in a communication dated August 5, 2008, that, as regards the review, update, and enhancement of legal and regulatory standards on domestic violence, (a) the Ministry of Defense had set up a working group composed of representatives of the Armed Services (Army, Air Force, and Navy), Carabineros de Chile, and the Investigation Police, in addition to representatives of the National Defense Retirement Fund Institutions in order to review and analyze the legal and regulatory standards that govern their activities and operations, with

particular attention to gender equity, domestic violence, and the situation within these institutions of their members, from the point of view of the principles and standards contained in international human rights law instruments.

27. With respect to the commitment concerning strengthening of study course contents connected with human rights at all levels and in all education processes in the institution (paragraph (b) of this undertaking), the State also reported in its communication of August 5, 2008, that as soon as the agreement was signed, the Education Department of Carabineros de Chile conducted a complete review of the Study Plans and Programs in use at the time, which encompassed all five levels of the Institutional Educational System: 1) Induction; 2) Advanced Training; 3) Specialization; 4) Skills Development; and, 5) Follow-up Courses.

28. As to the continuation of training workshops and seminars on matters related to gender equity, protection for women and the police role (paragraph (c) of this undertaking), the State informed in its communication of August 5, 2008, that these workshops were already being held in Carabineros de Chile and would continue to be so.

29. As regards undertaking (d) in the non repetition measures, the State reported that on May 7, 2008, there was a meeting of the working group created in 2007, which was attended by Mrs. Marcela Andrea Valdés' representative before the IACHR, attorney Juan Pablo Olmedo, as well as Mrs. Marcela Fajardo and Mrs. Consuelo Fernández from the NGO "Corporación Pro Bono", in order to review institutional rules and regulations with a view to detecting possible gender inequities. Subsequently, on September 23, 2008, the State reported that Corporación Humanas, represented by Mrs. Helena Olea, attended a meeting with the advisors of the Minister of Defense in response to an invitation from that Ministry, where they gave a presentation on what had been carried out to date with the group of legal advisors, and discussions were held on possible topics on which Corporación Humanas might give a presentation to said group. The State also provided information on the methodology adopted by the group of legal advisors and what had been done to date.

30. With respect to the second undertaking in this agreement, regarding specific reparation measures, the State mentioned in its communication of August 5, 2008, that a summarized version of the friendly settlement agreement had been published in the Official Gazette of the Republic of Chile and on the web sites of the Ministry of Defense in a micro site devoted to gender issues, and of Carabineros de Chile and kept there for more than three months. Subsequently, on August 18, 2008, the State reported that the complete text of the agreement had been published on the Carabineros de Chile website. (<http://www.carabineros.cl/>, banner "noticias destacadas", under the link "acuerdo de solución amistosa ante la Comisión Interamericana de Derechos Humanos.")

31. In relation to the third undertaking in the agreement regarding health care services, the State reported on August 5, 2008, that the Carabineros Health Department had issued the relevant instructions in order to introduce in the public assistance computer systems of Hospital "Del General Humberto Arraigada Valdivieso", the necessary measures to permit and facilitate care to the former officer as well as access to the health-care services offered at said hospital, to be charged to the health-care system to which she is attached. The State also informed that the

same measures had been adopted to provide her with access to health care at the Hospital of the Carabineros Social Security Department (DIPRECA), "Hospital Teniente Hernán Merino Correa," medical facility under the supervision of the Secretariat for Carabineros of the Ministry of Defense.

32. With respect to the fourth undertaking in the friendly settlement agreement, regarding economic reparations, the State reported that on April 23, 2008, Mrs. Valdés Díaz had been handed Banco del Estado Money Order N° 3413042 for the sum of twenty-three million Chilean pesos (\$23,000,000), the equivalent of US\$ 50,000 (fifty thousand US dollars) calculated at the exchange rate for that date.

33. As for the fifth undertaking in the agreement, regarding court costs, the State reported in its communication of August 5, 2008, that it had already paid these costs in an amount in national currency equivalent to US\$ 6,000 to representatives of Corporación Pro Bono.

VI. CONCLUSIONS

34. The Inter-American Commission has closely monitored the development of the friendly settlement arrived at in the present case. The preceding information shows that the agreement has been substantively fulfilled within the terms of the American Convention. The IACHR greatly values the efforts that both parties made to reach this settlement and implement it.

35. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on March 11, 2008.
2. To deem the foregoing agreement fulfilled.
3. To make the present report public and include it in its annual report to the General Assembly of the OAS.

Done and signed in Washington, D.C., on the 6th day of August 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Paolo G. Carozza, members of the Commission.