

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 81/09; Petition 490-03
Session: Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause: X v. Chile
The Commission will not release the name of Ms. X, under the terms of the friendly settlement agreement of March 11, 2008. To protect the identity of Ms. X, the Commission also will not release the name of Ms. Y.

Doc. Type: Resolution
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo G. Carozza.
Commission member Felipe Gonzalez, a Chilean national, did not participate in the deliberations, nor did he participate in deciding this case, in accordance with Article 17(2)(a) of the Rules of Procedure of the Commission.

Dated: 6 August 2009
Citation: X v. Chile, Petition 490-03, Inter-Am. C.H.R., Report No. 81/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)

Represented by: APPLICANTS: Perla Wilson and Lorena Fries Monleon

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I. SUMMARY

1. On February 7, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition presented by the La Morada Women’s Development Corporation (hereinafter “the petitioner”), represented by Attorney Perla Wilson, which alleges violations by the Chilean State (hereinafter “the State” or “the Chilean State”) of Articles 5(1), 11, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), with reference to Article 1(1) of that instrument, against Ms. X (hereinafter “the alleged victim”) and Ms. Y. During the proceedings, on April 28, 2005, the petitioner sent to the IACHR a communication requesting that the Humanas Corporation Regional Human Rights and Gender Justice Center, represented by Attorney Lorena Fries Monleón, be considered as co-petitioner.

2. The petitioners indicate that the State is responsible for harm to the privacy of the alleged victim, stemming from the complaint lodged by Policewoman Viviana Castillo against the alleged victim accusing her of maintaining a lesbian relationship with Ms. Y. The complaint also says that police officials handling the investigation exceeded their authority by ordering a search of the alleged victim’s residence and intrusions into her private and family life. The complaint further alleges denial of judicial protection in that the motion for protection lodged by the alleged

victim was found inadmissible and the punishment imposed on Policewoman Viviana Castillo was inadequate.

3. On July 2, 2003, the IACHR processed petition N° 490-03 concerning alleged violations of Articles 5(1), 11, 24, and 25 of the Convention, with reference to Article 1(1) of that instrument. On January 31, 2006, the Chilean State expressed its willingness to engage in dialogue on the possibility of a friendly settlement under the provisions of Article 48(1)(f) of the American Convention, which was accepted by the petitioners. This process was facilitated by the Commission through the exchange of written information and in the working meeting held at the Commission's headquarters.

4. On March 11, 2008, during the 131st regular period of sessions of the IACHR, the Chilean State and the petitioners signed a friendly settlement agreement. In this report, adopted according to Article 49 of the Convention and Article 41(5) of the IACHR Rules of Procedure, the Commission summarizes the allegations of fact by the petitioners, describes the agreement reached by the parties and the progress made in its application, and orders its publication.

II. PROCESSING BY THE COMMISSION

5. On July 2, 2003, the Commission received the petition and assigned it the number 490-03. On September 30, 2003, it transmitted the relevant portions to the State, requesting that within a period of two months the State present its comments, thus processing the petition. The IACHR received the State's first reply on February 3, 2006. In that communication, the State expressed to the IACHR its willingness to submit to the friendly settlement proceeding.

6. On February 22, 2006, the Commission made itself available to both parties to initiate the friendly settlement proceeding in accordance with Article 48(1)(f) of the American Convention and Article 41 of its own Rules of Procedure, granting the petitioner one month to submit its reply.

7. The IACHR also received communications from the petitioners on March 28, 2006, and July 17, 2006, which were duly transmitted to the State.

8. Moreover, the IACHR received communications from the State on July 24, 2006, and December 4, 2006, which were duly transmitted to the petitioners.

9. On January 29, 2008, the State requested a working meeting of the two parties, which was held on March 11, 2008; the friendly settlement agreement was signed by the State and the petitioners on that same date, during the 131st regular period of session of the IACHR.

10. The Commission received communications from the State on September 3, 5, and 23, 2008, reporting on progress made in carrying out the friendly settlement agreement, which were duly transmitted to the petitioners. On September 9, 2008, the IACHR received a communication from the petitioners requesting its participation in following up on the agreement, which communication was duly transmitted to the State. On October 21, 2008, the parties sent the IACHR a report on compliance with the friendly settlement agreement, and, on October 28,

2008, they requested its publication. On November 11, 2008, the petitioners requested the publication of the friendly settlement agreement.

11. On July 24, 2009, the IACHR received a communication from the petitioners in which Ms. Y formally withdrew from the petition to the IACHR. Consequently, the petition, then called X and Y, now was recorded as X. It should be noted that the negotiations toward a friendly settlement were conducted in relation to, and with the assistance of, Ms. X.

Precautionary measures

12. In a communication dated December 5, 2003, the petitioners requested that the IACHR adopt precautionary measures on behalf of the alleged victim, indicating that she had been harassed and persecuted by officials of the Carabineros de Chile (Chilean Police).

13. On May 28, 2004, the Commission denied the request for precautionary measures in that the information provided did not meet the requirements set forth in Article 25 of the Rules of Procedure of the IACHR.

III. THE FACTS

14. The petitioners say the alleged victim was harassed and persecuted by Chilean Police officials because of the complaint lodged by Policewoman Viviana Castillo accusing the alleged victim of maintaining a lesbian relationship with Ms. Y. Although the administrative proceeding concluded with the punishment of Policewoman Viviana Castillo for not telling the truth “regarding actions in her private life,” the petitioners maintain that the complainant was not found to have failed to tell the truth with regard to the private-life actions of the alleged victim.

15. According to the petition, the alleged victim has belonged to the Chilean Police Force since 2000, acting as an assistant in the Operations Office of the Seventh Police Precinct of Renca, under the Santiago North Police Prefecture, and, from August to the beginning of December 2002, had rented an apartment together with two female police officers from the same station, Viviana Castillo and Macarena Abarzúa. However, following management problems in the building, on December 6, 2002, the alleged victim rented a new apartment with Macarena Abarzúa, of which she advised Policewoman Viviana Castillo by telephone that same day.

16. On December 17, 2002[FN3], an investigation was begun in response to a complaint lodged by Policewoman Viviana Castillo with the Administrative Subprefect of the Santiago North Police Prefecture regarding an alleged lesbian relationship between the alleged victim and Ms. Y.

[FN3] Confidential Decision N° 1534.

17. The petitioners indicate that the alleged victim was subjected to a series of interrogations about her private life, carried out at her workplace. This situation escalated when nearly the

entire staff were called upon to make statements, all of them being informed of the reason for the investigation. The petitioners also allege that the official conducting the investigation exceeded his authority by ordering a search of the residence the alleged victim shared with Macarena Abarzúa. The search report is included in the investigation record but, they allege, the alleged victim was not allowed to see it. They indicate that Police Captain Jaime Jara was named to audit the contractual relationship between Policewoman Viviana Castillo and the alleged victim, without the latter's consent.

18. On December 31, 2002, the Court of Appeals of Santiago declared inadmissible the motions for protection lodged by the alleged victim, on the grounds that there existed a private criminal action regarding slander against her. The petitioners maintain that, in both cases, the Court did not recognize that this case involved not only the slanderous conduct of Policewoman Viviana Castillo but also the behavior of a public agency like the Police.

19. On February 6, 2003, the alleged victim was asked to sign a notice indicating a lack of evidence to prove the lesbian behavior attributed to her. The alleged victim declined to sign that notice, reasoning that it did not reflect the severe "psychological, emotional, and personal harm and damage to my professional and family reputation, harming my status as a woman, in addition to the attack on comradeship and good service"[FN4].

[FN4] Report by the alleged victim to the Seventh Police Precinct of Renca, dated February 19, 2003.

20. On March 4, 2003, the alleged victim received Official Letter N° 174, dated February 6, which indicated that "it was determined that Ms. Y has been a friend of the alleged victim for years, and considers her like a sister (...)". Policewoman Viviana Castillo received disciplinary punishment in the form of four days of arrest, with duty, for failing to tell the truth "regarding actions in her private life." The petitioners state that the punishment imposed on Policewoman Viviana Castillo did not recognize that Ms. Castillo failed to tell the truth concerning the private lives of the alleged victim and Ms. Y.

IV. FRIENDLY SETTLEMENT

21. At the headquarters of the Inter-American Commission on Human Rights, Washington, D.C., United States of America, during its 131st regular period of sessions, the alleged victim, represented by the La Morada Women's Development Corporation and by the Humanas Corporation Regional Human Rights and Gender Justice Center, and the representatives of the State, Ambassador Juan Aníbal Barría, Director of Human Rights of the Ministry of Foreign Affairs of Chile, and the Inspector General of Police and National Personnel Director, Gustavo González Jure, signed the friendly settlement agreement on March 11, 2008, which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT

The victim, who has requested that her identity not be released, represented by the La Morada Women's Development Corporation and by the Humanas Corporation Regional Human Rights and Gender Justice Center, presented, in June 2003, a petition to the Inter-American Commission on Human Rights (hereinafter "the IACHR") concerning violations by the Chilean State of her rights to humane treatment, privacy, equal protection, and judicial protection, enshrined in Articles 5, 11, 24, and 25 of the American Convention on Human Rights (hereinafter "the Convention"), and of the general obligation to respect and ensure those rights, established in Article 1 of that Convention.

During the processing of the complaint, the petitioners and the State expressed their intent and willingness to submit to the procedure provided in Article 48.1.f of the Convention and Article 41 of the Rules of Procedure of the IACHR (hereinafter "the Rules of Procedure"), and their interest in doing so, thus initiating a process of dialogue and understanding, for the purpose of developing the foundations and elements of a friendly settlement agreement based on respect for the human rights established in the Convention and other inter-American instruments, the aim being to resolve the matter placed before the IACHR.

In the interest of understanding completely the nature of the reparations measures the Chilean State will adopt to resolve this matter and the context in which these will be implemented, and to define the scope of the follow-up efforts to be carried out by a commission that will be established for that special purpose, it is appropriate and necessary to place on record the professional status of the victim, an active-service member of the Chilean Police, a hierarchical, disciplined, obedient, and non-deliberative institution, guided since its inception by its sound principles, and her free and voluntary decision to remain a member of that institution, with the rights and duties both circumstances entail, in keeping with the legal and statutory rules governing the police profession, applicable to all members of the Police Force without distinction.

To that end, the undersigned representatives of the State, and the petitioners, have agreed to sign this friendly settlement agreement, as follows:

1. Satisfaction

The Minister of National Defense, through the Subsecretariat of Police, shall send a letter to the petitioner and her family for the purpose of conveying a formal apology for the events reported and the consequences these entailed for their personal and family lives and privacy, and to spell out the measures provided to remedy the negative consequences thereof.

2. Guarantees of non-repetition

The Chilean State pledges to adopt two specific measures to prevent the recurrence of the events described or similar events. The first of these measures is already in place and was applied to a specific case in August 2007, the aims for which it was established having been accomplished in their entirety:

Drafting and publication, in the Official Bulletin of the Chilean Police, of Circular N° 1.671, dated January 18, 2007, which set forth criteria and guidelines for protecting the privacy of individuals in administrative investigations, establishing the importance of guaranteeing due administrative process, investigating only situations of administrative relevance, and respecting private lives and personal privacy.

The adoption of necessary, adequate internal administrative measures to ensure that the petitioner may carry out her police duties in a normal way, which measures include that the person who issued the accusation against her which gave rise to this petition and the petitioner shall not work at the same police station or in the same unit at any time henceforth.

3. Reparations

The Chilean State, through the Police, pledges to adopt two specific measures for the purpose of increasing the police operations experience and enhancing the skills and professional development of the petitioner:

The petitioner shall be transferred to a police operations unit located in any of the special economic treatment zones, in accordance with the country's geographic division, local characteristics, and the cost of living, where she shall remain as long as she meets the requirements for continuing in service, without extension of the timeframe established in Police personnel policy, the relevant sections of which are contained in General Order N° 1.484 of August 1, 2002, which is known to the petitioner and published as Annex 2 to Official Bulletin 3922 of August 17, 2002.

The petitioner shall have the opportunity to take the Police Force's English courses for one year, at the Force's educational facilities in the city of Santiago, and shall present her formal request through the Police Personnel Directorate, Superior Division, which shall channel it to the Education Directorate, so that she may be enrolled in the regular courses, at which time she shall be informed of the duration and beginning and ending dates of the level or levels to be taught during that academic year. This shall take place while the petitioner is assigned to an operations unit in the city of Santiago, i.e., once her regional assignment period has concluded. For that purpose the petitioner [alleged victim] shall be given a maximum period of two years from when she is assigned to an operations unit in the metropolitan region.

4. Dissemination of the friendly settlement agreement

The State undertakes to publish an extract of the commitments set forth in this friendly settlement agreement, ratified by the IACHR, one time only, in the Official Gazette of the Republic of Chile.

In addition, it shall publish the full text of the friendly settlement agreement on the microsites of the Ministry of Defense and Chilean Police websites, making it visible on the portal and keeping it there for at least three months.

5. Follow-up mechanism

Under the coordination of the Ministry of Foreign Affairs, Directorate of Human Rights, a commission shall be formed and tasked with following up on compliance with the agreed measures, and shall work in coordination with a representative of the Inter-American Commission on Human Rights, a representative of the Ministry of Defense, and the victim's representatives.

Finally, the petitioner declares that the agreed measures and the commitments assumed by the State under this friendly settlement agreement shall be the only enforceable commitments, their being no other claims, actions, or commitments with respect to the events that gave rise to the presentation of petition P-490-03, "Petitioner v. Chile."

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

V. COMPLIANCE WITH THE AGREEMENT

22. With respect to the first commitment undertaken in the agreement, on satisfaction measures, the State reported in a communication of August 14, 2008, that the Subsecretariat of Police, representing the Minister of National Defense, sent a letter to the alleged victim and, later, to her family expressing a formal apology to the alleged victim for the events reported and the consequences these entailed for their personal and family lives and privacy.

23. With respect to the second commitment undertaken in the agreement, on guarantees of non-repetition, the State reported in a communication of August 14, 2008, that, as for protection of personal privacy, in administrative investigations conducted by the Police Force, the commitment was carried out with the publication, in the Official Bulletin of the Chilean Police, of Circular N° 1.671, dated January 18, 2007, which established the importance of guaranteeing due administrative process, investigating only situations of administrative relevance, and respecting private lives and personal privacy.

24. With respect to the third commitment undertaken in the agreement, on reparations, in a communication of August 14, 2008, the State reported: (a) that the alleged victim was transferred to a special economic treatment zone, where she has been working since February 1, 2008. Because the furniture and belongings of the alleged victim were seriously damaged when moved by the transportation company, the Police Force made arrangements with that company to indemnify the alleged victim.

25. As for commitment (b) under the reparations measures, the State reported in a communication of August 14, 2008, that the alleged victim will have the opportunity to take the Police Force's English courses for one year, at the Force's educational facilities in the city of Santiago. Compliance with this commitment is pending the alleged victim's transfer to the city of Santiago.

26. With respect to the fourth commitment, concerning the dissemination of the friendly settlement agreement, the State reported in a communication of August 14, 2008, that the agreement was published in the Official Gazette on April 30, 2008, and on the Internet portal of the Chilean Police for three months.

27. With respect to the fifth commitment undertaken in the agreement, on the mechanism for follow-up on compliance with the agreed measures, the State reported in a communication of October 20, 2008, that, because the aforementioned terms of the agreement had been carried out, the two parties decided that it was not appropriate to convene the mechanism.

VI. CONCLUSIONS

28. The Inter-American Commission has followed closely the evolution of the friendly settlement reached in this case. The foregoing information shows that the agreement has been carried out, in essence, to a substantial degree, in keeping with the American Convention. The IACHR highly appreciates the efforts made by both parties to reach the agreement and to carry it out.

29. On the basis of the foregoing considerations of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RESOLVES:

1. To approve the terms of the friendly settlement agreement signed by the parties on March 11, 2008.
2. To declare the agreement to have been carried out.
3. To publish this report and to include it in the Annual Report it will present to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 6th day of the month 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.