

REPORT No. 163/10
CASE 12.195
FRIENDLY SETTLEMENT
MARIO ALBERTO OÑATE *ET AL.*
CHILE¹
November 1, 2010

I. SUMMARY

1. On August 4, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission or “the Commission”) received a petition lodged jointly by the Center for Justice and International Law (CEJIL) and the Public Interest Clinic [*Clínica de Interés Público*] of Universidad Diego Portales (hereinafter “the petitioners”), against the Republic of Chile (hereinafter ‘the State’ or “the Chilean State”), to the detriment of Mario Alberto Jara Oñate, Julio César Cid Deik, Marcelino Esteban López Andrade, José Tobar Exequel Muñoz, Fernando Villa Molina, Ciro Elías Rodríguez Uribe, Mario Eduardo Araya Marchant, and Sergio Iván González Bustamante, and all of the uniformed police, members of the Chilean “Carabineros” [National Police Force and Gendarmerie] . The petition alleges that the persons named were victims of an evaluation process conducted by the administration of the Chilean Carabineros, in violation of their basic rights. The petitioners further allege that said acts constitute violations of the rights to a fair trial, to respect for one’s honor and dignity [privacy], to protection of the family, to equal protection, and to judicial protection recognized in Articles 1.1, 2, 8, 11, 17, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention”).

2. The petitioners contend that because of the protests that the wives of the Chilean Carabineros mounted in response to the wage reductions of their husbands, the alleged victims were subjected to an evaluation process conducted by the authorities of the Carabineros. As a result of this process, their names were placed on the institution’s Elimination List, and their fundamental rights were violated.

3. The State alleged that the acts described in the petition did not characterize violations of the American Convention on Human Rights, and that the provisions referred to by the petitioners as having been violated were fully respected by the Chilean authorities. Hence it requests the petition to be declared inadmissible.

4. In the present friendly settlement report, as established in Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, a brief description of the acts alleged by the petitioners will be made and the friendly settlement, signed on January 20, 2010 between the representatives of the petitioners, Sergio Espejo Yaksic, and Domingo Lovera Parmo, the alleged victims, Mario Araya Marchat in the present case, and Gloria Ponce Jorquera, for case 1281, and the representatives of the Chilean State, will be transcribed. Moreover, the agreement signed by the parties is approved, and will be published in this report.

II. PROCESSING BY THE COMMISSION

5. On March 7, 2003, the IACHR approved Admissibility Report No. 31/03, by means of which it declared admissible the petition regarding alleged violations of Articles 1.1, 2, 8, 11, 17, 24, and 25 of the American Convention. That report was forwarded to the parties, in a communication dated March 11, 2003, in which, pursuant to Article 48.1.f of the American Convention and Article 38.2 of its Rules of Procedure, the IACHR placed itself at the disposal of the parties with a view to reaching a friendly settlement. In its communication on February 1, 2006, the State indicated to the IACHR that it

¹ Commissioner Felipe González, a Chilean national, did not participate in either the deliberations or the decisión regarding this petition, in accordance with Article 17.2.a of the Commission’s Rules of Procedure.

was interested in seeking a friendly settlement. In a communication dated November 15, 2006, the petitioners also expressed their interest in seeking a friendly settlement.

6. The petitioners made submissions to the Commission on the following dates: May 11, 2003; July 2, 2004 and September 20, 2004; June 9, 2005; December 14, 2006; January 9, 2007; July 1n and October 24, 2008; April 8, 2009; and July 21, 2010.

7. The State, for its part, submitted written communications on the following dates: September 17, 2003; January 7, 2004; February 6, 2007, and April 11 and 18, 2007; June 11, 2008, September 23, 2008, and October 16, 2008; February 13 and 17, 2009; March 4, 2009; and March 29, 2010.

8. During the process, the IACHR had working meetings with the parties on the following occasions: on October 22, 2004, there was a working meeting between the parties during the 121st regular sessions of IACHR at its headquarters in Washington, D.C.; on July 19, 2007, during the 128th regular sessions; on October 11, 2007, during the 130th regular session; and on October 24, 208, in the course of the 133rd regular session.

9. On March 29, 2010, the IACHR received a communication from the State, enclosing the friendly settlement agreement signed on January 20, 2010, by the alleged victims and their representatives and by the representatives of the Chilean State.

III. FACTS

10. The petitioners allege that the Chilean Carabineros conduct an annual performance rating. This rating is done by the Rating Board for Corporals and Carabineros [*Junta Calificadora de Cabos y Carabineros*], in the first instance, and by the Board of Appeals for Corporals and Carabineros, in the second instance, in accordance with the provisions of Regulation No. 8 on the Selection and Promotion of Carabineros Staff Members.

11. They indicate that in the evaluation process conducted in May 1998, the Rating Board for Corporals and Carabineros rated them as "satisfactory" or "under observation;" since they disagreed with that rating, they filed an appeal with the Board of Appeals for Corporals and Carabineros. In June 1998, they were notified of a decision that placed them on List No. 4 for Elimination, on the grounds that they had been reclassified on the item on loyalty. According to the petitioners, the administrative authorities did not act independently and impartially.

12. According to the petitioners, both the original classification and the re-evaluation that led to the dismissal of the Carabineros were the direct consequence of the demonstration held on April 27, 1998 by a group of wives of Carabineros who were protesting the low wages of their husbands. The petitioners allege that the disciplinary measures adopted against them as a result of the demonstration by their wives were taken into account during the evaluation process in May 1998. They alleged that the summary administrative proceeding was initiated for the purpose of investigating the alleged relationship between the married carabineros and the demonstrating wives. On June 2, 1998, the appealable decision established as a sanction the dismissal of the carabineros married to the women who demonstrated. The petitioners allege that the Rating Board and the Board of Appeals for Corporals and Carabineros used this proceeding as grounds to place them on the Elimination List and thus expel them from the institution.

13. The petitioners maintained that they exhausted the remedies available within the institution of the Carabineros to challenge the decision to include them on the Elimination List. They indicate that on July 1, 1998, they filed an appeal for protection with the Santiago Court of Appeals, requesting that it determine that their constitutional guarantees had been violated, and order the Chilean Carabineros to conduct a new evaluation. On January 28, 1999, the Court of Appeals rejected the petition, on the grounds that it was not competent to examine the findings of the Rating Boards, since they were sovereign entities, and that to examine the grounds for the rating would cause it to act as

another jurisdictional level. On February 1, 1999, the petitioners appealed that decision to the Chilean Supreme Court, which upheld the ruling of the Court of Appeals.

14. The petitioners alleged that in accordance with Article 24 of the American Convention, the Chilean State must guarantee all the rights established under its domestic legal system, without discrimination of any kind. The petitioners argued that the alleged victims were subjected to an arbitrary and discriminatory legal system, as a result of having been punished due to the action of third parties, thereby creating a special condition of responsibility for the Carabineros, which is discriminatory.

15. The petitioners alleged that their right to due process, established in Article 8 of the American Convention, was violated by the Chilean courts, by refusing to examine the alleged violations, leaving them defenseless, without any real possibility of appealing the arbitrary decisions adopted by the Evaluation Boards against them, i.e. without the opportunity to have them reviewed by a jurisdictional organ. The petitioners questioned the evaluation process and argued that the evaluation is supposed to be based exclusively on Article 9 of Rule No. 8 that refers to the selection and promotion of Carabineros staff members, and establishes the criteria for evaluation of the "personal and professional qualities of a junior staff member, bearing in mind the needs and requirements of the post."

16. The petitioners further contended that the Evaluation Boards lacked independence and impartiality, since they are part of a militaristic institution "governed by the values inherent in an entity of this nature: hierarchy, discipline, obedience, and loyalty are the values that form the foundation of such an institution, and cannot be undermined." They added that in Chile, carabineros are required to restrict the activities of their spouses, something that they regard as arbitrary interference in their private lives. In their opinion, this in turn constitutes a violation of their moral integrity and personal dignity, and the integrity of their families, rights recognized in Articles 11 and 17 of the American Convention.

17. The petitioners also argued that neither the Court of Appeals nor the Supreme Court conducted an impartial examination or an adequate review of the punishment imposed by the Chilean Carabineros. According to the petitioners, the Court of Appeals rejected their appeal on the grounds that it was not competent to analyze the underlying reasons or factors on which the Evaluation Board based its decision, on the grounds that that this would mean the Court would be acting as another jurisdictional level. Consequently, the petitioners maintained that they lacked an effective remedy to protect their rights, in violation of the provisions of Article 25 of the American Convention.

18. The petitioners requested that the Chilean State be declared responsible for violations of the rights to a fair trial, the right to have their honor and dignity respected, the rights of the family, the right to equality before the law, and the right to judicial protection, and that the State had the obligation to respect and guarantee their human rights and the responsibility to include in their domestic legislation the provisions contained in Articles 1(1), 2, 8, 11, 17, 24, and 25 of the Convention.

IV. FRIENDLY SETTLEMENT

19. On January 20, 2010, the friendly settlement agreement was signed by the representatives of the petitioners, Espejo Yaksic, and Domingo Lovera Parmo, the alleged victims, Mario Araya Marchat, in the present case, and Gloria Ponce Jorquera, in case No. 12281, and by the representatives of the Chilean State, the Under-Secretary of the Carabineros of Chile, Javiera Blanco Suárez, the Inspector General of the Chilean Carabineros, Samuel Cabezas Fonseca, and the Director of Human Rights in the Chilean Ministry of Foreign Affairs, Ambassador, Carmen Hertz Cádiz. The Commission takes note of the fact that the referenced agreement refers to another case as well; however, this report will be confined to an analysis of case 12195.

PROPOSAL FOR A FRIENDLY SETTLEMENT

- I. **Case N° 12195 Mario Jara Oñate *et al.***
Case N° 12281 Gilda Pizarro Jiménez *et al.*

II. DESCRIPTION OF THE PARTIES

The parties to this agreement are:

On one side, the Chilean State, represented by the Carabineros' Under-Secretary, Javiera Blanco Suárez; the Acting Assistant Director General of the Carabineros, Carabineros General Inspector Samuel Cabezas Fonseca, and the Human Right Director of the Foreign Ministry, Ambassador Carien Hertz Cádiz.

On the other side, the Public Interest Corporation, as the petitioners of the cases and representatives of the victims—represented by Sergio Espejo Yaksic and Domingo Lovera Parmo; and, Mario Alberto Jara Oñate, Julio Cesar Cid Deik, Marcelino Esteban López Andrade, José Exequiel Tobar Muñoz, Fernando Antonio Villa Molina, Cilio Elías Rodríguez Uribe, Mario Eduardo Araya Marchant, Sergio Iván González Bustamante, Gilda Rosario Pizarro Jiménez, Patricia Ponce Jorquera, Gloria Ponce Jorquera, Myrna Ponce Jorquera, Elizabeth Fuentes Ruiz y Soledad Pérez Fernández, as the victims.

III. FACTS

1. On August 4, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter- American Commission,” “the Commission,” or “IACHR”) received a petition against the Republic of Chile (hereinafter, “the State” or “the Chilean State”), presented by CEJIL and the *Clinica Jurídica de Acciones de Interés Público y Derechos Humanos de la Universidad Diego Portales* [Legal Clinic of Public Interest and Human Right Activities of Diego Portale University], in which Mario Alberto Jara Oñate, Julia Cesar Cid Deik, Marcelino Esteban López Andrade, José Exequiel Tobar Muñoz, Fernando Antonio Villa Molina, Ciro Elías Rodríguez Uribe, Mario Eduardo Araya Marchant, and Sergio Iván González Bustamante, all members of the Chilean Carabineros on the date on which the acts that are the subject of the petition occurred, alleged to have been victims of a performance evaluation process carried out by the officials of the Chilean Carabineros that resulted in their dismissal from the institution and the violation of their rights.

2. More specifically, the petitioners alleged that the State was responsible for violation of the right to judicial guarantees, to protection of one’s honor and dignity, to protection of the family, to equal treatment before the law, and to judicial protection, considered in conjunction with the State’s obligation to respect and guarantee human rights and the duty to adopt the corresponding domestic legislation, as recognized in Articles 1(1), 2, 8, 11, 17, 24, and 25 of the American Convention on Human Rights (hereinafter “American Convention” or “ACHR”).

3. The State, for its part, denied on that occasion that it had violated any provision of the American Convention, and it in turn requested that the petition be considered inadmissible, since it did not meet the requirements set forth in Articles 46.1.a and 46.1.b and 47.b and 47.c. In particular, it indicated that the evaluation processes were in keeping with legislation in force at the time of the events, under which the work performance of the petitioners was rated as deficient by the rating organs of the Chilean Carabineros, and that, the petitioners availed themselves of both administrative and judicial complaint mechanisms, which failed to revoke the institution’s decision.

4. On March 7, 2003, after analyzing the positions of the parties, the Inter-American Commission on Human Rights concluded that it was competent to examine the petition presented by the petitioners, and that it was admissible, in light of Articles 46 and 47 of the American Convention.

5. On December 20, 1999, the Inter-American Commission on Human Rights received a petition against the Republic of Chile, from Gilda Rosario Pizarra Jiménez, Patricia Ponce Jorquera, Gloria Ponce Jorquera, Myrna Ponce Jorquera, Elizabeth Fuentes Ruiz, and Soledad Pérez Fernández, all of whom were wives of members of the Chilean Carabineros on the date that the acts that are the subject of this petition occurred.

6. The victims alleged specifically that the State was responsible for violation of the right to humane treatment and to a fair trial, protection of one’s honor and dignity, freedom of thought and expression, right of assembly, rights of the family, equality before the law, and judicial protection, considered in relation to the obligation of the state to respect and guarantee human rights, and the duty to adopt domestic legislation, as recognized in Articles 1(1), 2, 5, 8, 11, 13, 15, 17, 24, and 25 of the American Convention.

7. The State in turn argued that there was no violation of the rights recognized in the American Convention, since the demonstration on a public road exceeded authorized limits, in accordance with legislation in force, thereby disrupting public order and causing the detention of several demonstrators.

8. Subsequently, on March 7, 2003, after examining the positions of the parties, the Commission concluded that it was competent to examine the petition presented by the victims, and that it was admissible, in light of Articles 46 and 47 of the American Convention.

9. During the processing of the complaints, the petitioners and the State indicated their willingness and interest in submitting the dispute to a friendly settlement proceeding, as stipulated in Articles 48.1.f of the Convention and 41 of the IACHR Rules of Procedure (hereinafter the Rules of Procedure), thereby initiating a process of dialogue and understanding, designed to develop the foundations and elements of such an agreement, based on respect for the human rights established in the Convention and other inter-American instruments.

10. On the basis of the foregoing, the signing parties have agreed to the following friendly settlement proposal, according to the following terms:

IV. PUBLIC RECOGNITION OF RESPONSIBILITY

11. By means of this friendly settlement agreement, the Chilean State recognizes that from the standpoint of international standards, violation of the rights of the petitioners occurred.

V. MEASURES OF NON-REPETITION

12. The Chilean State shall undertake to submit for review the laws and regulations applicable to the rating or evaluation of Carabineros, with a view to verifying that the rules pertaining to the performance evaluation of its staff members are in compliance with the principles of objectivity, adversarial action, and opposability, and that they generally provide for due protection of their employment rights, in accordance with international human rights standards.

Similarly, the State of Chile shall undertake to report to the IACHR within one year on the results of this review, and to inform it of progress made with regard to any measures that it may have adopted as a result of that review.

VI. MEASURES OF SPECIFIC REPARATIONS

13. Within three months of the signing of this agreement, the State of Chile is required to proceed to withdraw or clear the administrative record of the victims in the case, by removing any reference to the acts that motivated the present complaints.

14. The Chilean State shall undertake to publish once a summarized version of the present friendly settlement agreement in the Official Gazette of the Republic of Chile, and to publish for six months said version on the web pages of the Ministry of Foreign Affairs, Ministry of Defense, and the Chilean Carabineros.

15. The Chilean State, in a letter sent by the Carabineros Under-Secretary, Javiera Blanco Suárez, shall present its formal apologies to each of the victims of both cases for the acts that are the subject of the complaint and for the consequences they had on their lives and on their privacy and their families, and indicate at the same time the measures established to remedy the consequences and difficulties they caused.

16. The petitioners may have direct access to the health services provided both by the Carabineros' Hospital, "HOSPITAL DEL GENERAL HUMBERTO ARRIAGADA VALDIVIESO," and by the Hospital of the Carabineros' Social Welfare Department, [*Dirección de Previsión de Carabineros*], "HOSPITAL TENIENTE HERNÁN MERINO CORREA", indiscriminately, in accordance with the fees of each hospital center and the rates of the health system of the welfare entity indicated, as appropriate, which are in force on the date of the health services provided, in accordance with the health care system applicable to the interested parties, FONASA or ISAPRE, as the case may be. To this end, they are understood to be authorized by the authorities of these

two hospital centers, and thus do not require sponsorship of an active or passive contributor from the Carabineros Social Welfare Department to assume economic responsibility for the medical services granted.

For the purpose of implementing the foregoing, the responsible institutions of the hospitals shall include the petitioners in their data bases, so that they only need show their current identification card in order to receive the services of those centers.

VII. REPARATIONS

17. The victims shall be paid, by way of reparations for the material and nonmaterial damages caused, the amount of US\$17,000 to each one (**Case No. 12195 - Mario Jara Oñate et al**) of the former employees names in this document, and the amount of US\$3,000 to each one of the petitioners who are not employees of the Carabineros listed in this document (**Case N° 12281 Gilda Pizarro Jiménez et al**). The aforesaid amounts shall be paid in their equivalent in pesos at the time of payment.

The payment shall be made by means of a check made out in the name of each of the victims, within 3 months counting from the date of this agreement; these documents shall be given to the petitioners at the Human Rights Department of the Ministry of Foreign Affairs of Chile, after showing their national identification card.

VIII. FOLLOW-UP COMMITTEE

18. For the purpose of monitoring compliance with the commitments made in this agreement, the parties agree to set up a Follow-Up Committee coordinated by the Human Rights Department of the Ministry of Foreign Affairs of Chile. This Committee shall be made up of a representative of the Human Rights Department of the Chilean Foreign Ministry, a representative of the Chilean Carabineros, a representative of the Ministry of Defense, and a representative of the petitioners. The procedures and frequency of the meetings of this Committee shall be agreed by its members. The Committee shall periodically submit a report to the IACHR's Executive Secretariat, showing the progress made in fulfilling the obligations under this agreement.

IX. NONCOMPLIANCE WITH THE AGREEMENT

19. The points of agreement in this friendly settlement must be effectively carried out. Failure to comply with one or several points will result in termination of the friendly settlement procedure with the Inter-American Commission on Human Rights, and both the State and the petitioners shall proceed to immediately inform said Commission that they are withdrawing from the friendly settlement, which shall authorize the Commission to pursue the processing of the cases according to procedure.

X. DISCLAIMER PERTAINING TO REPAYMENT OF COSTS AND EXPENSES

20. It is clearly established that, with a view to facilitating a friendly settlement in both cases and to contributing to revising Chile's domestic legislation to make it consistent with international standards for protection of human rights, the petitioners agree to renounce their right to claim repayment of costs and expenses from the State.

XI. INTERPRETATION

21. The parties agree that the meaning and scope of this Agreement shall be interpreted in accordance with the relevant parts of Articles 29 and 30 of the American Convention, on the basis of the principle of good faith. In the case of doubts or disagreement between the parties regarding the contents of this Agreement, It shall be the Inter-American Commission on Human Rights that decides on their interpretation. The Commission will also be responsible for verifying compliance.

XII. OFFICIAL APPROVAL

22. Once the commitments assumed under this agreement are carried out in their entirety, the Chilean State and the petitioners shall submit the present friendly settlement to the Inter-American Commission on Human Rights for approval and publication, pursuant to the provisions of Article 49

of the American Convention and Article 40.5 of the Rules of Procedure of the Inter-American Commission on Human Rights.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

20. The IACHR reiterates that, in accordance with Articles 48.1.f and 49 of the Convention, the purpose of this procedure is “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Acceptance of this procedure is an expression of the good faith of the State to comply with the purposes and objectives of the Convention, by virtue of the principle of *pacta sunt servanda*. It would further reiterate that the friendly settlement procedure contemplated in the Convention makes it possible to conclude individual cases in a non-contentious manner, and in various countries it has proven to be an important and effective vehicle for resolution, that can be used by both parties.

21. In this context, the Commission concludes that, according to the case records, there has been compliance of Articles 11, 13, 14, 15, 16, and 17 of the agreement. With regard to Articles 12 and 18, the Commission was informed that the State has not yet complied with these sections. The *Corporación de Interés Público* [Public Interest Corporation] has requested a meeting with the State to discuss this issue. The Commission will follow up on the sections pending compliance by the State.

22. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case. The Commission highly appreciates the efforts made by the parties to arrive at this agreement and finds that it is compatible with the purposes and objectives of the Convention.

VI. CONCLUSIONS

23. Based on the foregoing considerations, and in accordance with the procedure stipulated in Articles 48.1.f and 49 of the American Convention, the Commission would like to reiterate its profound gratitude for the efforts made by the parties and its satisfaction that the friendly settlement agreement reached in this case is consistent with the purpose and objectives of the American Convention.

24. On the basis of the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on January 20, 2010.

2. To continue to monitor and follow up on the points of the friendly settlement agreement pending compliance, and to remind the parties of their commitment to report periodically to the IACHR on compliance with this friendly settlement agreement.

3. To publish this report and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 1st day of November 2010. (Signed): Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Members of the Commission.