REPORT No. 162/10
CASE 12.281
FRIENDLY SETTLEMENT
GILDA ROSARIO PIZARRO *ET AL.*
CHILE[1]
November 1, 2010

I. SUMMARY

1. On December 20, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "Commission," or "IACHR"), received a complaint filed jointly by the Center for Justice and International Law (CEJIL) and the *Clínica de Interés Público* of the Universidad Diego Portales (hereinafter "the petitioners"), against the Republic of Chile (hereinafter "the State" or "the Chilean State"), for violations of the rights of Mses. Gilda Rosario Pizarro Jiménez, Elena del Carmen Ponce Jorquera, Gloria Lewelyn Ponce Jorquera, Myrna Janette Ponce Jorquera, Isabel del Luján Fuentes Ruiz, and Angélica Soledad Pérez Fernández (hereinafter "the alleged victims"), all of them spouses of police officers in the *Carabineros de Chile*. The petition alleges that the aforementioned persons were all victims of several violations of their human rights after they staged a peaceful, public demonstration because they found that the economic benefits received by their spouses as Carabineros were insufficient. The petitioners allege that these acts constitute violations of their rights to humane treatment, to a fair trial, to privacy, to freedom of thought and expression, to assembly, rights of the family, and rights to equal protection and to judicial protection, were all violated. They alleged that the State breached its obligation to respect and protect human rights, and failed to fulfill its duty to adopt provisions under domestic law established in Articles 1 (1), 2, 5, 8, 11, 13, 15, 17, 24, and 25 of the American Convention on Human Rights (hereinafter "the Convention").

2. The petitioners asserted that the alleged victims were protesting an executive order issued by the Government of Chile whereby their families' interests were impacted. They added that, once the decree was issued, the alleged victims staged a peaceful protest, but they were violently attacked by members of the Carabineros' special forces. The alleged victims then filed a criminal complaint against the Carabineros, but the trial judge found that he did not have jurisdiction in the matter since the charges were against members of the Carabineros and therefore the case needed to be tried by the military courts. The proceedings were then transferred to the Sixth Military Police Prosecutor's Office, where the case remains at the stage of a preliminary criminal investigation.

3. The State argued that petitioners failed to exhaust domestic remedies and to file the petition before the statutory deadline. For these reasons, the State asked that the petition be found inadmissible.

4. This friendly settlement report, pursuant to Article 49 of the Convention and Article 41(5) of the Rules of Procedure of the Commission, outlines the facts alleged by the petitioners and transcribes the friendly settlement agreement signed on January 20, 2010 by the representatives of the petitioners, Messrs. Espejo Yaksic and Domingo Lovera Parmo, the alleged victims Mario Araya Marchat and Gloria Ponce Jorquera, and the representatives of the Chilean State. In addition, the Commission hereby accepts the Agreement as signed by the parties and agrees on the publication of this report.

II. PROCESSING BY THE COMMISSION

5. On March 7, 2003, the IACHR approved Admissibility Report No. 32/03, by which it declared the petition admissible with regard to the alleged violations of Articles 2, 5, 8, 11, 13, 15, 17, 24

[1] Commission member Felipe González, a Chilean national, did not participate in either the deliberations or the decision made on this petition, pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission.

and 25, and in relation to Article 1(1) of the American Convention. Said report was transmitted to the parties on March 11, 2003, and in the transmittal letter, pursuant to 48 (1) (f) of the American Convention and Article 40 (1) of its Rules of Procedure, the IACHR made itself available to the parties to reach a friendly settlement. In a message dated February 1, 2006, the State told the IACHR of its interest in reaching a friendly settlement. In a message dated November 17, 2006, the petitioners also told the IACHR of their willingness to arrive at a friendly settlement.

6. The petitioners submitted messages to the Commission on the following dates: May 12, 2003; July 2, 2004; July 6, 2006; November 17, 2006; January 11, 2007; July 5, 2007; October 11, 2007; July 1, 2008; September 26, 2008; October 24, 2008; February 5, 2010; and July 21, 2010.

7. The State, for its part, submitted written messages on the following dates: September 17, 2003; November 7, 2003; October 20, 2004; May 5, 2005; December 19, 2005; January 11, 2006; February 3, 2006; March 30, 2006; January 30, 2007; February 17, 2007; June 14, 2007; June 11, 2008; October 16, 2008; February 23, 2009; and March 29, 2010.

8. During the proceedings, several working meetings were held with the IACHR and the parties on the following dates: October 22, 2004, during the 128th regular session; October 11, 2007 during the 130th regular session; and October 24, 2008, during the 133rd regular session. On December 9, 2008, the Commission received a letter from Clínica de Acciones de Interés Público of the Universidad Diego Portales, indicating that it would no longer represent the alleged victims and that they would be represented by the *Corporación de Interés Público*. CEJIL, in turn, indicated in a letter dated January 26, 2010, that it no longer represented the alleged victims, and that all future communication should be sent through the Corporación de Interés Público.

9. On March 29, 2010, the IACHR sent a message to the State transmitting 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 alleged that in early 1998, the Government of Chile enacted Executive Decree No. 2 of the Ministry of National Defense, which established a set of wages and social security benefits for the staff of the Carabineros de Chile. The decree favored the officer corps over enlisted men in the number and quality of the benefits, which caused the enlisted men and their families to be unhappy with the Government and the top brass of the Carabineros.

11. The petitioners indicated that relatives of the Carabineros began to express their discontent in small private meetings, primarily held by the wives of the Carabineros de Chile. However, that initiative was repressed by the Carabineros' leadership, who prohibited enlisted men or any family members to express "their discontent with the new Executive Decree, under threat of dismissal and subjection to a strict system of sanctions for disloyalty to the institution."

12. The petitioners added that, despite the threats, the alleged victims went to the office of the Metropolitan Government on April 23, 1998, to request authorization to hold a peaceful protest on April 27, 1998, the Anniversary of the Carabineros de Chile. The Metropolitan Regional Government granted said authorization on April 24, 1998.

13. The petitioners allege that on the day of the demonstration, the wives of the Carabineros de Chile went to the Plaza of the Constitution and found it surrounded by more than one hundred Carabineros, Carabinero buses, tear gas launchers, and armored cars, all waiting to suppress the demonstration. Upon seeing this, the wives decided to join another group of wives of Carabineros in the Benjamín Vicuña Mackenna Plaza. However, their path was cordoned off by 50 specially trained Carabineros near that plaza. The wives indicate that they saw three water cannons, two tear gas launchers, two armored cars, civilian police personnel, and police buses at the scene. The demonstrators tried to advance peacefully, but the special forces personnel began to attack them by "kicking their legs,

pushing them, and hitting their knees." The police contingent also hurled insults at them regarding "their alleged political affiliation with leftist parties and the disloyalty they had shown to the Carabineros de Chile." The petitioners further assert that the Carabineros turned a water cannon on them, which they used violently against some of the demonstrators.

14. The petitioners added that, despite these acts of repression, the demonstrators continued to peacefully exercise their constitutional rights and headed towards the Avenida Libertador Bernardo O'Higgins to continue the demonstration, when they were again intercepted by Carabineros who used a water cannon against them. The petitioners allege that the victims were attacked with pushing and kicking, and were illegally deprived of their liberty. They further allege that Gloria Lewelyn Ponce Jorquera was beaten by the Carabineros even though she was pregnant, and that Patricia Elena del Carmen Ponce Jorquera suffered a fracture which required one year of rehabilitation therapy.

15. According to the petitioners, on June 3, 1998, they filed a criminal complaint for minor injuries, illegal detention, and mistreatment before the Second Criminal Court of Santiago. This court ruled that it did not have jurisdiction to hear the matter because the charges were against members of the Carabineros and therefore the matter needed to be resolved by a military tribunal. Consequently, the matter was referred to the Sixth Military Prosecutor's Office, where it remains at the stage of preliminary criminal investigation. According to the petitioners, the immediate and direct consequence of the events described above was the dismissal of the spouses of the women who had conducted the demonstration; it is these women who filed the petition before the Commission.

16. The petitioners added that the alleged victims did not have access to due process of law within the domestic jurisdiction, where they could have filed claims to the protect the infringed rights, since the tribunal lacked the necessary independence and impartiality. The petitioners indicate that the military courts are apparently not independent, given the fact that the military judges are subordinate to higher ranking officials in the administration, given that they can be fired by them.

17. According to the petitioners, these facts constitute a violation of several of their rights by the national authorities. The Chilean State is internationally liable, as it has neither protected nor guaranteed the victims' right to due process because is has failed to hear the criminal charges the victims filed in the national courts.

18. The petitioners requested that the Chilean State be found responsible for violations of their rights to rights to humane treatment, to a fair trial, to privacy, to freedom of thought and expression, to assembly, rights of the family, and rights to equal protection and to judicial protection, in light of the State's obligation to respect and protect human rights and its duty to adopt provisions of domestic law as established in Articles 1 (1), 2, 5, 8, 11, 13, 15, 17, 24, and 25 of the Convention.

IV. FRIENDLY SETTLEMENT

19. On January 20, 2010, a friendly settlement agreement was signed by the representatives of the petitioners, Messrs. Espejo Yaksic and Domingo Lovera Parmo, the alleged victims Mario Araya Marchat and Gloria Ponce Jorquera, and the representatives of the Chilean State, the Office of the Assistant Secretary of the Carabineros de Chile, Ms. Javiera Blanco Suárez, the Inspector General of the Carabineros de Chile, Mr. Samuel Cabezas Fonseca, and the Director for Human Rights of the Foreign Ministry of Chile, Ambassador Carmen Hertz Cádiz. The Commission notes that the aforementioned agreement mentions another case as well, but this report shall limit its analysis to 12.281.

PROPOSED FRIENDLY SETTLEMENT AGREEMENT

I. Case N° 12.195 Mario Jara Oñate et al
Case N° 12.281-- Gilda Pizarro Jiménez et al

II. PARTIES.

The parties to this agreement are:

First, The Chilean State, represented by the Office of the Assistant Secretary of the Carabineros, Ms. Javiera Blanco Suárez; The General Alternative Assistant Director of the Carabineros, General Inspector of the Carabineros, Mr. Samuel Cabezas Fonseca and the Human Rights Director of the Foreign Ministry, Carmen Hertz Cádiz.
Second, the *Corporación de Interés Público*, as petitioner in the cases and representative of the victims—represented by Sergio Espejo Yaksic y 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 Jímenez, Patricia Ponce Jorquera, Gloria Ponce Jorquera, Myrna Ponce Jorquera, Elizabeth Fuentes Ruiz and Soledad Pérez Fernández, as victims.

III. FACTS.

1. On August 4, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition against the Republic of Chile (hereinafter "the State" or "the Chilean State") filed by CEJIL and the Clínica Jurídica de Acciones de Interés Público y Derechos Humanos of the Universidad Diego Portales, in which Messrs. Mario Alberto Jara Oñate, Julio 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 of whom were members of the Carabineros de Chile when the events underlying the complaint occurred, alleged that they were victims of a grading system applied by the Carabineros de Chile, which resulted in their dismissal from the institution and a violation of their rights.

2. The petitioners specifically allege that the State was responsible for violating their right to a fair trial, right to privacy, rights of the family, and right to equal protection and to judicial protection in connection with the State's obligation to respect and protect human rights, and its duty to adopt provisions of domestic law, as set forth in Articles 1(1), 2, 8, 11, 17, 24 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention.").

3. At that time the State denied that any provisions of the American Convention had been violated, and it requested that the petition be declared inadmissible on the grounds that it did not meet the requirements established in Articles 46 (1) (a) (b) and 47 (b) and (c). The State specifically pointed out that the grading process was in accord with the rules in force when the events occurred, and that the rating authorities of the Carabineros de Chile had found the petitioners' job performance to be deficient. Furthermore, the administrative and judicial review mechanisms had been applied, and these did not overturn the decision by the institution.

4. On March 7, 2003, after analyzing the positions of the parties, the Inter-American Commission on Human Rights concluded that it had jurisdiction to hear the petition filed and that it was admissible under Articles 46 and 47 of the American Convention.

5. On December 20, 1999 the Inter-American Commission on Human Rights received a complaint against the Republic of Chile filed by Mses. Gilda Rosario Pizarra Jiménez, Patricia Ponce Jorquera, Gloria Ponce Jorquera, Myrna Ponce Jorquera, Elizabeth Fuentes Ruiz, and Soledad Pérez Fernández, all of whom had been spouses of police officers in the Carabineros de Chile on the date in which the events underlying their complaint took place.

6. These victims specifically alleged that the State was responsible for violating their rights to humane treatment, to a fair trial, to privacy, to freedom of thought and expression, to assembly, rights of the family, and rights to equal protection and to judicial protection, which constitutes a failure of the State to fulfill the obligation to respect and protect human rights, and its duty to adopt provisions of domestic law, as set forth 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 had been no violation of the rights in the American Convention, since the demonstration in the public thoroughfare had exceeded the limits authorized by the laws in force, which generated alterations of public order and caused some demonstrators to be arrested.

8. Later, on March 7, 2003, after analyzing the positions of the parties, the Commission

concluded that it had jurisdiction to examine the petition filed by the victims and that it was admissible under Articles 46 and 47 of the American Convention.

9. While the complaints were being processed, the petitioners and the State expressed their desire, willingness, and interest in submitting to a friendly settlement procedure, as established in Articles 48(1)(f) of the Convention and 41 of the Rules of Procedure of the IACHR (hereinafter the Rules of Procedure). They undertook a process of dialogue and understanding aimed at laying the foundations and establishing the elements of such agreement, founded on respect for the human rights established in the Convention and other inter-American instruments.

10. Pursuant tot he above, the undersigned parties have agreed to the following proposed friendly settlement, based on the terms indicated below:

III. PUBLIC ACKNOWLEDGEMENT OF RESPONSIBILITY.

11. Through this friendly settlement agreement the Chilean State acknowledges that according to international standards, there was a violation of the petitioners' rights.

IV. NON-REPETITION MEASURES.

12. The Chilean State undertakes to conduct a review of the legal and regulatory provisions applicable to performance evaluations of the Carabineros. The purpose is to verify whether rules governing evaluations of staff performance respect the principle of objectivity, allow both sides to be heard, allow for rebuttal, and generally afford proper protections of the rights of the Carabinero employees, in accordance with international human rights standards.

The Chilean State also undertakes to inform the IACHR, within one year's time, of the results of that analysis, and to report on progress in implementing measures that may be recommended as a result of said review.

V. SPECIFIC REPARATIONS.

13. Within three months of signing this agreement, the Chilean State is obliged to remove or clean up the administrative files of the victims in this case, eliminating all records of the events which gave rise to these complaints.

14. The Chilean State undertakes to publish a summary of this friendly settlement agreement, one time only, in the Official Gazette of the Republic of Chile, and to post it for six months on the websites of the Foreign Ministry, the Ministry of Defense, and the Carabineros de Chile.

15. Through a letter sent by the Office of the Assistant Secretary of the Carabineros, Ms. Javiera Blanco Suárez, to each of the victims in both cases, the Chilean State will give a formal apology for the reported violations and the repercussions these had on their lives and personal and family relationships. The letter will indicate the measures proposed to remediate the consequences and inconveniences the victims suffered.

16. The petitioners may have direct access to the health services offered by both the Carabineros' Hospital "DEL GENERAL HUMBERTO ARRIAGADA VALDIVIESO," and the Hospital of the Carabineros Social Security Department "HOSPITAL TENIENTE HERNÁN MERINO CORREA", interchangeably, according to the rates set by each hospital and the rates in effect for the health system in the aforementioned beneficiaries' institutions when health services are rendered, and according to whether the beneficiaries are enrolled in the FONASA or SAPRE health insurance systems. To this end, they are understood to be authorized by the authorities of the aforementioned hospitals to receive services without the sponsorship of an active or passive contributor into the Carabineros Social Security system, which is taking financial responsibility for the medical benefits received.

In order to accomplish this, the corresponding offices within the aforementioned hospitals will incorporate the petitioners into their databases, allowing them to use the hospitals by simply showing a current citizen's identification card. This will be implemented within one month of the date of this agreement.

VI. REPARATIONS.

17. The following sums shall be paid to compensate for material damages and for pain and suffering: US$17,000 each (Case 1N° 12.195 - **Mario Jara Oñate, et al)** to the former employees of the Carabineros individually mentioned in this document, and US$3,000 for each of the petitioners individually mentioned herein who were not employees of the Carabineros **(Case N° 12.281 Gilda Pizarro Jiménez, et al).** The aforementioned payments will be made in the equivalent of Chilean pesos at the time payment is made.

Payment will be made through a non-transferable check payable to the order of each of the victims, within three months of the date of this agreement. These checks shall be picked up by the petitioners at the Human Rights Department of the Foreign Ministry of Chile, upon presentation of the party's national identification card.

VII. FOLLOW-UP COMMITTEE

18. In order to monitor compliance with the commitments made in this agreement, the parties agree to form a Follow-Up Committee coordinated by the Human Rights Department of the Ministry of Foreign Affairs of Chile. This Committee will be comprised of one representative of the Human Rights Department of the Foreign Ministry of Chile, one representative of the Ministry of Defense, and one representative of the petitioners. The methodology and frequency of said Committee's meetings will be decided by its members. The Committee will periodically report to the Executive Secretariat of the IACHR on progress being made fulfilling the commitments undertaken in this agreement.

VIII. NON-FULFILLMENT OF THESE COMMITMENTS.

The commitments made in this friendly settlement agreement must be fulfilled. Failure to comply with one or more points shall terminate the friendly settlement procedure before the Inter-American Commission on Human Rights, and both the State and the petitioners shall immediately proceed to inform the Commission that they rescind the friendly settlement, thus empowering the Commission to proceed to review the cases according to procedure.

IX. RELINQUISHMENT OF COURT AND LITIGATION COSTS.

It is clearly established that in order to facilitate the arrival at a friendly settlement in both cases and help bring Chilean domestic law in line with international standards for the protection of human rights, the petitioners relinquish their right to claim reimbursement for court and litigation costs from the State.

X. INTERPRETATION.

21. The parties agree that the meaning and scope of this Agreement should be interpreted according to Articles 29 and 30 of the American Convention on Human Rights, as relevant and under the principle of good faith. In the event of any concerns of disagreement among the parties regarding the content of this Agreement, the Inter-American Commission on Human Rights shall decide on matters of interpretation. Said Commission will also verify compliance.

XI. APPROVAL

22. Once the commitments undertaken in this Agreement are fully implemented, the Chilean State and the petitioners shall present to the Inter-American Commission on Human Rights this friendly settlement agreement for its final approval and publication, according to the provisions of Article 49 of the American Convention on Human Rights 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, pursuant to Articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is to reach "a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The State's willingness to participate in this process

indicates a good faith effort to carry out the purposes and objectives of the Convention, by virtue of the principle of *pacta sunt servanda*. The Commission also wishes to reiterate that the friendly settlement procedure established in the Convention allows individual cases to be settled out of court, and in cases involving several countries, it has proven to be an important and effective solution, which can be invoked by either party.

21. In this regard, the Commission concludes that, according to the case file, paragraphs 11, 13, 14, 15, 16, and 17 of the agreement have been fulfilled. As for paragraphs 12 and 18, the Commission has been informed by the Corporación de Interés Público that these commitments have not yet been fulfilled by the State. The Corporación de Interés Público has requested a meeting with the State to discuss the matter. The Commission shall follow-up on the sections of the agreement with which the State has not yet complied.

22. The Inter-American Commission has been closely following the friendly settlement process in this case. The Commission greatly appreciates the efforts made by the parties to arrive at this agreement, and finds it to be compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

23. Based on the foregoing considerations and in accordance with the procedure set forth in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes 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 object and purpose of the American Convention.

24. Based on the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

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

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

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

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.